

No. 11471

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

PETE GARCIA CERVANTES,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

APR 11 1947

PAUL F. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

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For Appellee:

JAMES M. CARTER

United States Attorney

ARTHUR LIVINGSTON

WM. P. HAUGHTON

Assistants U. S. Attorney

600 U. S. Post Office and Court House Bldg.
Los Angeles 12, Calif. [1*]

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*Page number appearing at foot of Certified Transcript.

In the District Court of the United States in and for the
Southern District of California, Central Division

February, 1946, Term

No. 18831

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PETE GARCIA CERVANTES,

Defendant.

INDICTMENT

[U. S. C., Title 50, App., Sec. 311—Selective Training
and Service Act of 1940]

The grand jury charges:

COUNT ONE

[U. S. C., Title 50, App., Sec. 311]

Defendant Pete Garcia Cervantes, a male person within the class made subject to selective service under the Selective Training and Service Act of 1940, registered as required by said act and the regulations promulgated thereunder and became a registrant of Local Board No. 199, said board then and there being duly created and acting, under the Selective Service System established by said act, in Los Angeles County, California, in the Central Division of the Southern District of California; pursuant to said act and the regulations promulgated thereunder the defendant was classified in Class I-A and was notified of said classification and a notice and order by said board was duly given to him to report for induction into the armed forces of the United States of America on November 9, 1942, at Los Angeles, Los Angeles County, California, in the division and district aforesaid; on or about November 9, 1942, and at all times thereafter until on

or about July 14, 1946, the defendant did knowingly fail and neglect to perform a duty required of him under said act and the regulations promulgated thereunder, in that he did knowingly fail and neglect to report for induction into the armed forces of the United States as so notified and ordered to do. [2]

COUNT TWO

[U. S. C., Title 50, App., Sec. 311]

Defendant Pete Garcia Cervantes, a male person within the class made subject to selective service under the Selective Training and Service Act of 1940, registered as required by said act and the regulations promulgated thereunder and became a registrant of Local Board No. 199, said board then and there being duly created and acting, under the Selective Service System established by said act, in Los Angeles County, California, in the Central Division of the Southern District of California; the defendant, on or about November 9, 1942, in violation of the provisions of said Selective Training and Service Act of 1940, did knowingly and unlawfully evade service in the land or naval forces of the United States of America, in that he did knowingly and unlawfully depart from the United States and go to a foreign country, to wit: the Republic of Mexico, for the purpose of evading service in the land or naval forces of the United States, and did there remain until on or about July 14, 1946.

A True Bill:

CLYDE R. BURDICK

Foreman

JAMES M. CARTER

United States Attorney

[Endorsed]: Filed Aug. 21, 1946. [3]

[Minutes: Tuesday, October 8, 1946]

Present: The Honorable Ben Harrison, District Judge.

This cause coming on for further proceedings; Wm. P. Haughton, Assistant U. S. Attorney, appearing as counsel for the Government; Anna Zacsek, attorney, appearing as attorney for the defendant, Pete Garcia Cervantes, who is present in custody; the Court makes a statement and orders that the order made and entered on October 7, 1946, denying the motion of defendant to withdraw his former plea of guilty to count one is vacated, and the sentence of the Court on October 7, 1946, on count one is vacated and set aside; and the former motion of defendant to withdraw plea of guilty to count one is granted, and a plea of not guilty to the said count one is ordered entered for the defendant; and this cause is hereby set for trial on both counts of the Indictment for October 30, 1946, at 10 A. M., and bail of the defendant is hereby fixed in the sum of \$10,000, and the defendant is remanded to the custody of the U. S. Marshal. [4]

DEFENDANT'S PROPOSED OFFER OF PROOF

Jean Cordeau, a witnesses, who had on the 9th day of October, 1946, been duly served with a copy of subpoena and the original thereof shown to him, and the return on said subpoena duly made and filed with the clerk of the court; having failed to appear on the 30th day of October, 1946 as required by said subpoena; and it further appearing that the bailiff of the court having telephoned to San Diego at the instance and request of the defendants to inquire as to said Jean Cordeau, and said bailiff having advised defendants that Jean Cordeau was sick in bed; now therefore the defendants deem-

ing him a material witness, since he would, if called on the stand on their behalf would testify as follows:

That he is a member of the Selective Service Board in National City, No. 168. That he has been such during its existence, and now is. That he has acted as a liaison officer between the two countries, the United States of America and Mexico for approximately twenty five years last past, on behalf of Mexican Nationals.

That he heard of Pete Cervantes through mutual friends during the month of April, 1945. That he became interested in their problem, to wit, of wishing to enter this country for the purposes of being inducted into the United States Army. That pursuant to this advisement, he went to Tiajuana and did there talk to Pete Cervantes. That this conversation took place in the shoe-shop operated by Pete Cervantes, during the month of April, 1946, and only he and Pete Cervantes were present.

That Pete told him that he had tried to enter the armed forces ever since he had left with his uncle. That the uncle had told him he couldn't return to the [11] United States because he had no papers. That the uncle had died a few months after the return to Mexico. That they came to Tia Juana to try to reenter the United States for the purpose of entering the army. That he had gone to all the offices of the legal advisers in Tiajuana, and to the America Consul. That at each place and at every turn he had been told in substance he could not get back, and the army would not take him.

That in substance Jean Corteau told him then and there that the army would take him, as they took delinquents; that he would undertake to help him to this end. That he they began to write to the California Selective

Service Board head at Sacramento relative to this problem of the Mexican National.

That he also told Pete that if Pete belonged to his board, he would take him into the army at once. But that he had no power to do so because Pete belonged to board 199.

That thereafter on occasions too numerous to mention but on the whole approximately twice a month, or oftener, he visited Pete in Tiajuana. That those visits were for the purpose of effecting the acceptance of Pete into the army and of entering the United States for this purpose.

That pursuant to this plan and these visits, he wrote certain letters on the stationary of the Selective Service Board to local board 199 and to Col. Leitch in Sacramento, which letters are marked defendants' exhibits for identification No. "E", and people's exhibits "11", "12". That in addition thereto he advised Peter to write letters and to whom, and what in substance to state, which is people's No. 13 for exhibit.

That defendant makes these following exhibits for identification as a part of his offer of proof, "E", "1", "J". And defendants incorporate said letters in his offer of proof.

That all of said allegations are material to defendant's case, in this that it negatives the specific intent of evading [12] service in the armed forces of the United States, and in particular service in the army.

That it is *coorobative* of defendant's testimony, Pete Cervante's in particular, and further it is a chain in the evidence showing the state of the defendant's mind.

[Endorsed]: Filed Oct. 31, 1946. [13]

[Title of District Court and Cause]

VERDICT

We, the Jury in the above-entitled cause, find the defendant, Pete Garcia Cervantes,

Guilty as charged in count one of the Indictment, and

Guilty as charged in count two of the Indictment.

Dated: Los Angeles, California, October 31, 1946.

FOREST W. MONROE

Foreman

[Endorsed]: Filed Oct. 31, 1946. [14]

District Court of the United States

Southern District of California, Central Division

No. 18831

Criminal Indictment in Two Counts for Violation of

U. S. C., Title 50, App., Sec. 311

UNITED STATES

v.

PETE GARCIA CERVANTES

JUDGMENT AND COMMITMENT

On this 31st day of October, 1946, came the United States Attorney, and the defendant Pete Garcia Cervantes appearing in proper person, and by his attorneys, Anna Zacsek and Howard Levine; and,

The defendant having been convicted on verdict of guilty of the offenses charged in the Indictment in the above-entitled cause, to wit: Count one: * * * did

knowingly fail and neglect to report for induction into the armed forces of the United States as so notified and ordered to do; and Count two: * * * did knowingly and unlawfully depart from the United States and go to a foreign country, to wit: the Republic of Mexico, for the purpose of evading service in the land or naval forces of the United States, and did there remain until on or about July 14, 1946;—as more fully set forth in the Indictment; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of two (2) years in a penitentiary on each of the two counts of the Indictment, said periods to begin and run concurrently;

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) BEN HARRISON

United States District Judge

A True Copy. Certified this 31st day of October, A. D. 1946.

(Signed) EDMUND L. SMITH

Clerk

(By) Murray E. Wire

Deputy Clerk

[Endorsed]: Filed Oct. 31, 1946. [15]

[Title of District Court and Cause]

[DEFENDANT'S REQUESTED INSTRUCTIONS]

Defendant's Instruction No. 1

A defendant in a criminal action is presumed to be innocent until the contrary is proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal, but the effect of this presumption is only to place upon the state the burden of proving him guilty beyond a reasonable doubt. Reasonable doubt is defined as follows: "It is not a mere possible doubt; because everything relating to human affairs and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of all the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they can not say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

Penal Code 1096.

Covered by other instructions. Ben Harrison, J. [16]

Defendant's Instruction No. 2

You are instructed that in every crime or public offense, there must exist a union, or joint operation of act and intent, or criminal negligence. There is no criminal liability where the act is committed, through misfortune or accident, with no intent or negligence. If you believe from all the evidence that Pedro Garcia Cervantes and Salvador Garcia Cervantes committed the acts charged

with no intent or criminal negligence, then you should bring in a verdict of *acquittal* for the defendants.

Penal Code 20

Penal Code 26(6)

Covered by other instructions; refused. Ben Harrison, J. [17]

Defendant's Instruction No. 4

You are instructed that diplomatic representatives, technical attaches of foreign embassies and legations, consuls general, consuls, vice-consuls, and consular agents of foreign countries, and persons in other categories to be specified by the President, residing in the United States, who are not citizens of the United States, and who have not declared their intention to become citizens of the United States, are not required to be registered under Sect. 2 (Sect. 302) of the Selective Training and Service Act, and are relieved from liability for training and service under Section 3(b) (Section 303) of said act.

U. S. C. A., Tit. 50, App., Sect. 305(a).

No. Refused. Not applicable and incomplete. Ben Harrison, J. [18]

Defendant's Instruction No. 5

You are instructed that every alien between the ages of 21 and 36 who lives or has a place of residence or abode in the United States, temporary, or otherwise, or for whatever purposes taken or established, is required

to present himself for and submit to registration unless such alien falls within one of the specific classes exempted from such registration by Section 5(a) of the Selective Training and Service Act of 1940.

39 Op. A. G., October 11, 1940.

Refused. Not applicable as no evidence alien comes within exemptions. Ben Harrison, J. [19]

Defendant's Instruction No. 6

You are instructed that the rules and regulations made by the director of the Selective Training and Service Act of 1940 do not provide any norm or standard by which the local board can determine whether or not a person is in one of the "other Categories" mentioned in Section 5 of the Act, 50 U. S. C. A. Appendix, Sect. 305, nor do they provide a norm or standard by which if certain facts are present it can determine whether or not a person is or is not residing in the United States, as that term is used in Sections 2 and 3 of the Act, 50 U. S. C. A. Appendix, Sections 302, 303.

Ex Parte Asit Ranjan Ghosh, 50 F. Supp. 851.

No. Refused. Ben Harrison, J. [20]

Defendant's Instruction No. 7

You are instructed that a male alien who is now in or hereafter enters the United States, who has not declared his intention to become a citizen of the United States, is not a "a male person residing in the United States", with-

in the mean of Section 2 or Section 3 of the Selective Training and Service Act of 1940 as amended.

Sect. 611.13, Selective Service Regulations.

No. Refused. Ben Harrison, J. [21]

Defendant's Instruction No. 8

You are further instructed that due process has been denied where there is no rule promulgated in the regulations whereby any standards are established for any person who is subject to the Selective Training and Service Act to determine whether or not he is or is not entitled to a certificate of nonresidence.

Ex Parte Asit Ranjan Ghosh, 58 F. Supp. 851.

No. Refused. Ben Harrison, J. [22]

Defendant's Instruction No. 9

You are instructed that by treaty dated January 22, 1943, between the United States of America and the Government of Mexico, the nationals of either country residing in the other shall be accorded the same rights and privileges as nationals of the country of residence.

Nationals of each country who have been registered for or inducted into the Army of the other country in accordance with the military service laws of the latter, and who have not declared their intention to acquire the citizenship of the country in which they reside shall upon being designated by the country of which they are nationals and with their consent be released for military service in

its forces. The procedure for the transportation and turning over of these persons will be agreed upon by the appropriate authorities of the two countries who are empowered to bring about the objections desired.

57 U. S. Statutes at Large, 78th Congress, 1st Session, 1943.

No. Refused. Ben Harrison, J. [23]

Defendant's Requested Instruction No. 12

Selective Service Act Regulations.

633.91. Induction and Subsequent Classification of Co-Belligerent Aliens

(a) At any time prior to his induction into the land or naval forces of the United States, a registrant who is not a citizen of the United States and who has not declared his intention to become a citizen of the United States but who is a citizen or subject of a cobelligerent nation may request and be permitted to be inducted into the armed forces of such cobelligerent nation, provided an agreement has been entered into between the United States Government and the government of such cobelligerent nation, the terms of which permit such induction and give to citizens or subjects of the United States residing in such cobelligerent nation a reciprocal right to serve in the land or naval forces of the United States.

(b) The manner in which, the time when, and the place where a request may be made by such registrant to be inducted into the armed forces of the cobelligerent

nation of which he is a citizen or subject shall be prescribed by the Director of Selective Service.

(c) When such registrant files a request for induction into the armed forces of the cobelligerent nation of which he is a citizen or subject and *files* to report for or be inducted into the armed forces of such cobelligerent nation, he shall, if acceptable, be inducted into the armed forces of the United States when his order number is reached.

(d) When it has been determined that any registrant has been inducted into the armed forces of a cobelligerent nation in the manner in this section provided, his classification shall be reopened and he shall be placed in Class 1-G.

Covered by other instructions. Ben Harrison, J. [24]

Defendant's Instruction No. 15

If a delinquent reports or is brought before a local board other than his own local board, the local board to which he reports or before which he is brought shall advise his own local board by telegram or other expeditious means that the delinquent has reported to or has been brought before such local board and that he will be inducted or assigned to work of national importance, as the case may be, if it is satisfactory to his own local board. The registrant's own local board shall reply by telegram or other expeditious means.

(b) If the registrant's own local board advises or if it is ascertained from the United States Department of

Justice that the registrant is delinquent because he has failed to respond to an Order to report for Induction (Form 150) or an Order to Report for Work of National Importance (Form 50), the delinquent shall be delivered for induction or steps taken to assign him to work of national importance, and the local board to which the registrant has reported or before which he has been brought shall prepare such papers as may be necessary in order to effect such induction or assignment and forward copies thereof to the registrant's own local board. The induction or assignment of such a registrant shall be reported to the registrant's own local board in the same manner as if the registrant had been transferred for delivery to the local board from which such registrant was inducted or assigned. [25]

(c) If the registrant's own local board advises that an Order to Report for Induction (Form 150) or an Order to Report for Work of National Importance (Form 50) has not been issued to such registrant or that the registrant is no longer a delinquent, it shall advise the local board before which the registrant has appeared or has been brought of the action to be taken with reference to such registrant.

642.21 Selective Service Act Regulations.

Refused. Not applicable. Ben Harrison, J. [26]

[Endorsed]: Filed Oct. 31, 1946. [27]

[Title of District Court and Cause]

NOTICE OF APPEAL

To the Honorable James M. Carter, United States Attorney, and to the Honorable William P. Haughton; and to the Clerk of the Above Named Court.

You and Each of You Will Please Take Notice that defendant above named gives notice of appeal as follows:

I.

That the name and address of appellant is, Pete Garcia Cervantes, and he is now in custody, at the Los Angeles County Jail, Hall of Justice, Los Angeles, California.

II.

That the name and address of appellant's attorneys are, Anna Zacsek, at 1488 Sunset Boulevard, Los Angeles 26, California, and Howard A. Levine, at 1007 Spring Arcade Building, 541 South Spring Street, Los Angeles 13, California.

III.

Offense, Violation U. S. C., Title 50, App., Sec. 311; Count One. Defendant did knowingly fail and neglect to report for induction into the armed forces of the United States as [28] more fully set forth in court one of the Indictment.

County Two: That defendant did knowingly and unlawfully depart from the United States and go to a Foreign Country—Republic of Mexico, for the purpose of evading service in the land or naval forces of the

United States, and did there remain until on or about July 14, 1946, as more fully set forth in count two of said Indictment.

IV.

Date of Judgment. October 31st, 1946.

V.

Concise Statement of Judgment and Sentence. Judgment on order, defendant having been found guilty of said offenses is hereby committed to the custody of the attorney General, or his authorized representative for the period of two years in a penitentiary on each of the two counts of the Indictment, said periods to begin and run concurrently.

VI.

Name of Institution Where Defendant Now Confined.
Los Angeles County Jail.

VII.

The above named defendant, appellant herein, hereby appeals to the United States Circuit Court of Appeals, for the Ninth Circuit, from the above stated Judgment.

Dated this 7th day of November, 1946.

ANNA ZACSEK and
HOWARD A. LEVINE

By Anna Zacsek

Attorneys for Appellant

[Endorsed]: Filed Nov. 8, 1946. [29]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 33 inclusive contain full, true and correct copies of Indictment; Minute Orders Entered October 8, 1946 and October 31, 1946; Subpoena to Jean Corteau, Sr. with return thereon; Defendant's Proposed Offer of Proof; Verdict; Judgment and Commitment; Defendant's Requested Instructions; Notice of Appeal; Order for Transmission of Original Exhibits; Designation of Record on Appeal and Affidavit and Order Extending Time to File Record on Appeal, which, together with copy of Reporter's Transcript in two volumes and original Government's Exhibits 1 to 13 inclusive and Defendant's Exhibits A to K inclusive, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$9.85 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 13 day of January, A. D. 1947.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy Clerk

In the District Court of the United States for the
Southern District of California

Central Division

Honorable Ben Harrison, Judge Presiding

United States of America, Plaintiff, vs. Pete Garcia
Cervantes, Defendant. No. 18,831-Crim.

United States of America, Plaintiff, vs. Salvador Gar-
cia Cervantes, Defendant. No. 18,832-Crim.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Wednesday, October 30, 1946

Appearances:

For the Plaintiff: James M. Carter, Esq., United States
Attorney; by Wm. P. Haughton, Esq., Asst. United States
Attorney.

For the Defendants: Anna Zacsek.

Los Angeles, California, Wednesday, October 30, 1946
10:00 a.m.

The Court: You may proceed.

The Clerk: United States versus Pete Garcia Cer-
vantes, No. 18,831 Criminal, and United States versus
Salvador Garcia Cervantes, No. 18,832 Criminal.

Mr. Haughton: The plaintiff is ready.

Miss Zacsek: The defendants are ready.

May it please this Honorable Court, Mr. Jean Croteau,
our material witness and upon whom the defense is predi-
cated as the most essential witness, was served by me
personally. He was in court, as the court will recall, the
last time this cause was called.

I have filed a return of the subpoena. Mr. Cervantes, Senior, saw him yesterday, and he said he would be here without fail. He has always been here regularly whenever this matter has come up for any reason at all, even on the matter of the plea.

Now, I would respectfully request the court to excuse me or call a recess on this matter long enough for me to telephone San Diego and find out if he left and if so when.

The Court: Counsel, there is a preliminary matter that I want to dispose of first. I have heretofore ordered the consolidation of these two cases for trial. I question now [4*] whether I had that right without the consent of the defendants.

Miss Zacsek: Yes, your Honor.

The Court: And unless the defendants are willing to have the two cases tried together it will be necessary to try them separately.

I would like to know at this time what your attitude and the attitude of the defendants is in that respect.

Miss Zacsek: In my opinion, may it please this honorable court, I feel the cause would be best served by a consolidation. I think since they are both active together and since the facts are identical, I feel that they should be tried. Is that your wish, Mr. Cervantes?

Pete Cervantes: Yes.

Miss Zacsek: And you?

Salvador Cervantes: Yes.

The Court: Let the record show the Government consents to a consolidation.

*Page number appearing at top of page of original Reporter's Transcript.

Mr. Haughton: Yes, your Honor; that is satisfactory to the Government.

The Court: I am willing to take a recess so you may put in a long distance call. Did you serve him with a subpoena?

Miss Zacsek: Yes, your Honor. I have here made the return. May it please the court, I also respectfully move [5] the association of Mr. Howard Lavine with myself as counsel for these defendants and each of them.

The Court: You may take your order.

Why not go ahead and impanel a jury and if your witness is not here then we will take a recess. He may have been delayed a few moments. And if it is necessary to issue a bench warrant we will do that and have the Marshal bring him in even though it is necessary to continue the trial until tomorrow morning.

Miss Zacsek: I am sure the only reason he is delayed is because of some unavoidable circumstance. I know the gentleman's character. I can vouch for his integrity and honor. I know if he said he would be here he will be here if it is humanly possible.

The Court: Well, he may have been delayed a few minutes. Instead of holding up a large number of people it would be better to just hold up the jury. As a matter of fact, I do not see why we cannot proceed with the Government's case and in the meantime give you an opportunity to put in a long distance telephone call and ascertain what the trouble is. Then if it is necessary to take a continuance until tomorrow morning we can do so. That will only inconvenience 12 people instead of 20 or 30.

Miss Zacsek: Thank you. I think that is a very wise suggestion, your Honor. [6]

The Court: With that understanding we will proceed with the impanelling of the jury.

I wish counsel would approach the bench.

(A discussion was had at the bench without the hearing of the jury and reporter.)

(The following proceedings were had within the presence and hearing of the jury:)

Miss Zacsek: If the court will bear with me for just a moment, I will respectfully request a brief recess in order to request someone to telephone for me and ascertain whether or not the witness has yet left San Diego for court.

The Court: Very well.

(Short recess.)

The Court: Are you ready to proceed?

Miss Zacsek: Yes.

(Following an examination by the court of the jury as to its qualifications, the following proceedings were had:)

The Court: Has the Government any additional questions?

Mr. Haughton: None, your Honor.

The Court: Have you any additional questions?

Miss Zacsek: Just one, may it please the court, and that is whether or not by reason of personal relationships with any person who may have been engaged in the armed services of the United States, whether such a relationship would cause a prejudice in the mind of any juror, either for [7] or against the defendants because of this particular charge?

The Court: I think my general question covered that. I asked them if they know of any reason whatsoever they couldn't give these defendants a fair and impartial trial.

Would the fact that some member or members of your families may have been engaged in the Armed Forces of the United States cause you to have any prejudice one way or the other in this case? In other words, do you feel that you can try this case solely upon the evidence as presented to you in this court and upon that evidence alone render a verdict thereon?

Miss Zacsek: There are one or two other questions which Mr. Lavine has suggested that we ask. One is whether or not there are on the panel any veterans of World War I or II, and if so, whether by reason of that fact they might be prejudiced. I know the general questions the court has asked has covered that but this is a specific question.

The Court: Are any of you gentlemen veterans of either World War I or II?

A Juror: Yes.

The Court: Do you feel that that fact would have any bearing upon you arriving at a just verdict in this case?

The Juror: No, sir.

Miss Zacsek: And whether or not any member of the panel is affiliated with or belongs to any veterans' organization? [8]

The Court: I am not going to ask them that. They may belong to any veterans' organization or church that they want to. I do not think that is any of this court's business or your business.

Miss Zacsek: No, it isn't and I am not asking for reasons of curiosity. It is merely because of the one thing, does such an affiliation exist?

The Court: I will not inquire as to the jurors' affiliations.

Miss Zacsek: Thank you, your Honor.

The Court: Do both sides pass for cause?

Mr. Haughton: The Government passes for cause.

Miss Zacsek: Pass for cause.

The Court: Any challenges on the part of the Government?

Mr. Haughton: No, the Government passes.

Miss Zacsek: We accept the jury.

The Court: Both sides satisfied?

Mr. Haughton: Yes, your Honor.

Miss Zacsek: Yes, your Honor.

The Court: The jurors will be sworn.

(Whereupon, the jury was sworn.)

The Court: Counsel, do you desire to have the indictment read?

Miss Zacsek: We waive the reading of the indictments, [9] may it please the court.

The Court: Do you desire to make an opening statement?

Mr. Haughton: A brief one, if the court please.

(Whereupon, an opening statement was made by counsel for the plaintiff.)

The Court: Do you desire to make an opening statement, counsel?

Miss Zacsek: Thank you, your Honor. I would like to also make a brief opening statement, if I may.

(Whereupon, an opening statement was made by counsel for the defendants.)

The Court: I wish to instruct the jury at this time that counsels' statements, as heretofore indicated, are not to be considered by you as evidence. The evidence in the case must come from the witness stand.

May I ask, are there any facts in this case that can be stipulated to?

Miss Zacsek: I think so.

The Court: In view of the opening statement of counsel?

Miss Zacsek: I think so.

The Court: Can it be stipulated they were both registered and registrants of Local Board 199?

Miss Zacsek: Yes, I believe so, may it please the court. I take it, however, this will not preclude the introduction of the questionnaires? [10]

The Court: No; it will not preclude the introduction of anything. I don't know—maybe counsel would prefer to go ahead in the regular way.

Mr. Haughton: Whatever the court thinks. It might be just as easy.

The Court: Can you not by stipulation introduce the registration cards?

Mr. Haughton: That is very satisfactory.

The Court: The questionnaires of each defendant?

Mr. Haughton: Yes, sir.

The Court: And the order to report for induction?

Miss Zacsek: That is right. We can stipulate to that and have them introduced as exhibits, then we can refer to them.

The Court: And that Salvador was ordered to report and those orders will fix the dates.

Mr. Haughton: Yes, your Honor.

The Court: Has counsel examined the exhibits?

Miss Zacsek: Yes. I have excerpts from the exhibits, may it please the court.

The Court: Very well. You may offer the exhibits according to your stipulation. I would suggest that you first introduce the registration card of Salvador Cervantes. Will counsel stipulate it may be admitted without further proof? [11]

Miss Zacsek: So stipulated.

The Clerk: Plaintiff's Exhibit 1.

(The document referred to was marked as Plaintiff's Exhibit 1, and was received in evidence.)

The Court: Then the questionnaire.

Miss Zacsek: So stipulated.

The Court: That is as to Salvador Cervantes?

Miss Zacsek: Yes.

The Clerk: Plaintiff's Exhibit 2.

(The document referred to was marked as Plaintiff's Exhibit 2, and was received in evidence.)

The Court: Is it stipulated both defendants were classified 1-A?

Miss Zacsek: And the dates thereon, may it please the court.

The Court: The questionnaire, I presume, will show the dates?

Miss Zacsek: The questionnaire speaks for itself. The various dates and so forth appear on it.

The Court: Then the order to report for induction.

Mr. Haughton: A copy of the order to report.

Miss Zacsek: I will stipulate it may be received.

The Clerk: Plaintiff's Exhibit 3 in evidence.

(The document referred to was marked as Plaintiff's Exhibit 3, and was received in evidence.) [12]

The Court: And that it was mailed in due course?

Miss Zacsek: So stipulated.

The Court: And will it or will it not be stipulated they did not report at the time and place indicated?

Miss Zacsek: So stipulated.

The Court: Now, with reference to Pete Cervantes. The registration card will be exhibit next in order.

Miss Zacsek: I stipulate it may be introduced into evidence.

The Clerk: Government's Exhibit 4.

Mr. Haughton: The Selective Service questionnaire of Pete Cervantes.

Miss Zacsek: Stipulated that may be introduced into evidence.

The Clerk: Plaintiff's Exhibit 5.

Mr. Haughton: The copy of the order to report for induction.

The Court: The original of which was mailed to the defendant in due course?

Miss Zacsek: Well, I will stipulate it was mailed to the address given by the defendant or to his last known place of residence.

The Court: A member of the Board will testify as to what the records show.

Miss Zacsek: I think the records speak for themselves. [13] I will stipulate that whatever the questionnaire address was—I merely wish to say this, that in the case of both brothers I do not wish to stipulate that they received it; merely that it was sent to an address given by them.

Mr. Haughton: To the last address furnished by them to their board.

Miss Zacsek: Correct, yes.

Mr. Haughton: Have Government's Exhibit 4 and 5 been admitted, your Honor?

The Court: Yes.

(The documents referred to were marked as Plaintiff's Exhibits 4 and 5, and were received in evidence.)

Mr. Haughton: And the order to report for induction will be government's next in order.

The Clerk: Plaintiff's Exhibit 6.

The Court: It may be received.

(The document referred to was marked as Plaintiff's Exhibit No. 6, and was received in evidence.)

Mr. Haughton: We further stipulate that Local Board 199 had jurisdiction of the address each registrant gave at the time of registration.

Miss Zacsek: So stipulated.

The Court: Have you any further instruments, counsel, or letters or copies of letters? [14]

Mr. Haughton: Yes, I do have, if the court please. If we might have a short recess, we might stipulate as to several items that I contemplated putting in evidence in the regular manner.

Miss Zacsek: I think that is a very wise suggestion. I think we can expedite the trial and save considerable time that way.

The Court: I am always a strong believer in saving time. Under those circumstances we will take a recess for a few moments rather than have to go through perhaps a lot of formalities.

The jury is admonished at this time not to discuss this case among yourselves or permit any person to discuss it with you or express or form any opinion until the case has been finally submitted to you.

This admonition is not a mere formality but is a serious one and it is necessary for you to conform to it in order that each party may have a fair trial in this court. And when I say "each party" the government is entitled to a fair trial and so are the defendants.

Will counsel stipulate that that admonition is sufficient and need not be repeated at future recesses?

Miss Zacsek: So stipulated.

Mr. Haughton: Yes, your Honor.

The Court: Very well, we will recess for 15 minutes, [15] ladies and gentlemen.

(Short recess.)

The Court: Will counsel stipulate the jurors are present in the jury box and the defendants are in court with their counsel?

Miss Zacsek: So stipulated.

Mr. Haughton: Stipulated, your Honor.

The Court: What did you accomplish during the recess?

Miss Zacsek: A great deal, I think.

Mr. Haughton: Considerable, I think. I offer in evidence the statement made by Salvador Cervantes to Mr. Skousen, a special agent of the FBI.

Miss Zacsek: So stipulated.

The Court: It may be admitted in evidence.

The Clerk: Plaintiff's Exhibit 7.

(The document referred to was marked as Plaintiff's Exhibit 7, and was received in evidence.)

Miss Zacsek: It may be deemed that all of these exhibits which will be introduced by Mr. Haughton may be introduced into evidence as far as the defendants are concerned.

The Court: You understand the stipulation means that the statements were free and voluntary.

Miss Zacsek: Certainly.

Mr. Haughton: I next offer in evidence a statement signed under oath by Salvador Cervantes. It is in the form [16] of questions and answers before Inspector McFadden of the Immigration and Naturalization Service.

Miss Zacsek: So stipulated.

The Court: It may be admitted.

The Clerk: Plaintiff's Exhibit 8.

(The document referred to was marked as Plaintiff's Exhibit 8, and was received in evidence.)

Mr. Haughton: And is it stipulated in connection with that that this statement was given voluntarily and with the understanding that it might be used in evidence?

Miss Zacsek: So stipulated.

Mr. Haughton: I next offer in evidence a statement given by Pete Cervantes to Mr. _____ a special agent of the FBI and I understand that it is stipulated in connection with this offer that it too was freely and voluntarily given and with the understanding it might be used in evidence.

Miss Zacsek: So stipulated.

The Court: It may be admitted.

The Clerk: Plaintiff's Exhibit 9.

(The document referred to was marked as Plaintiff's Exhibit 9, and was received in evidence.)

Mr. Haughton: I next offer in evidence a certified copy of the statements made in the form of questions and answers by Pete Cervantes to Inspector McFadden of the Immigration and Naturalization Service, and also the stipulation in connection therewith that it was freely and voluntarily given.

Miss Zacsek: So stipulated.

The Court: It may be received.

The Clerk: Plaintiff's Exhibit 10.

(The document referred to was marked as Plaintiff's Exhibit 10, and was received in evidence.)

Mr. Haughton: I next offer in evidence a letter that appears in the draft board file of Peter Cervantes, dated November, apparently received or dated November 15, 1945. I cannot tell which. It is addressed to the chairman of the board and written by Eugene Corteau, Sr.

Miss Zacsek: So stipulated.

The Court: It may be received.

The Clerk: Plaintiff's Exhibit 11.

(The document referred to was marked as Plaintiff's Exhibit 11, and was received in evidence.)

Mr. Haughton: I next offer in evidence as the government's exhibit next in order as one exhibit, a letter from Mr. Corteau—I withdraw the latter part of that. A letter from the defendant Peter Cervantes to Local Board No. 199 in which he encloses a copy of a letter he received from Eugene Corteau, Sr.

Miss Zacsek: So stipulated.

The Court: It will be received.

The Clerk: Plaintiff's Exhibit 12. [18]

Mr. Haughton: I next offer in evidence Government's Exhibit next in order, a letter from defendant Peter Cervantes to Colonel H. K. Leach, of state headquarters of the Selective Service System, dated April 5, 1946, in which there is attached a card of Eugene Corteau, Sr., and a letter of transmittal from the State Director to Local Board 199.

Miss Zacsek: So stipulated.

The Court: It will be received.

The Clerk: Plaintiff's Exhibit 13.

(The document referred to was marked as Plaintiff's Exhibit 13, and was received in evidence.)

Miss Zacsek: I offer as the defendants' exhibit first in order a letter addressed to Pete Cervantes, dated May 10, 1946, signed by the chairman of Local Board 199.

Mr. Haughton: So stipulated. It may be introduced.

The Court: It may be received.

The Clerk: Defendant's Exhibit A.

(The document referred to was marked as Defendant's Exhibit A, and was received in evidence.)

Miss Zacsek: I next offer into evidence an application for a visa, non-quota, from the American Foreign Service at Tijuana on behalf of Pete Cervantes.

Mr. Haughton: No objection. Stipulated that it may be admitted.

The Court: It will be received. [19]

The Clerk: Defendant's Exhibit B.

(The document referred to was marked as Defendant's Exhibit B, and was received in evidence.)

Miss Zacsek: And the same as to Salvador Cervantes from the same consulate in Tijuana.

Mr. Haughton: No objection. Stipulated it may be received.

The Court: It will be admitted.

The Clerk: Defendant's Exhibit C.

(The document referred to was marked as Defendant's Exhibit C, and was received in evidence.)

Miss Zacsek: Offer a birth certificate of Salvador Cervantes.

Mr. Haughton: In that connection, if the court please, it is in Spanish and I do not read Spanish. I am willing to stipulate that Peter Cervantes was born on the date and at the time indicated in his questionnaire and registration card.

Miss Zacsek: Are you willing to stipulate the same as to Salvador?

Mr. Haughton: Yes.

Miss Zacsek: I will withdraw this offer. I next offer into evidence a letter, undated, addressed to the chairman of the local board in Torrance, California, signed by Peter. There is no date or envelope with it. [20]

Mr. Haughton: In that connection I am unable to stipulate to that. It does not appear it was ever presented to the local board and I don't know anything about it.

Miss Zacsek: Then I will offer this for the purpose of identification only at this time.

The Court: It will be marked for identification.

The Clerk: Defendant's Exhibit D for identification.

(The document referred to was marked as Defendant's Exhibit D for identification.)

Miss Zacsek: The next exhibit of the defendants for identification only at this time is a letter dated April 2,

1946, to Peter Cervantes, signed by Eugene Corteau, Sr., of Local Board 168.

The Court: It may be marked for identification.

The Clerk: Defendant's Exhibit E.

(The document referred to was marked as Defendant's Exhibit E for identification.)

Miss Zacsek: I now seek to introduce into evidence a certificate in Spanish, bearing the photographs, both front and profile views, of Pete Cervantes for identification only at this time, purporting to be a statement or an enlistment, voluntary enlistment into the Mexican army.

The Court: It may be marked for identification.

The Clerk: Defendant's Exhibit F for identification. [21]

(The document referred to was marked as Defendant's Exhibit F for identification.)

Miss Zacsek: And the same voluntary registration for the Mexican army as far as Salvador is concerned, which has also on it a front and profile view of the defendant Salvador Cervantes, at this time for identification only.

The Court: It may be so marked.

The Clerk: Defendant's Exhibit G for identification.

(The document referred to was marked as Defendant's Exhibit G for identification.)

Miss Zacsek: And a further booklet of Salvador Cervantes of his military service, for identification only.

The Court: It may be so marked.

The Clerk: Defendant's Exhibit H for identification.

(The document referred to was marked as Defendant's Exhibit H for identification.)

Miss Zacsek: Then a letter, and envelope, one dated July 28, 1946, addressed to myself and signed by Eugene Corteau, on a Selective Service heading and Selective Service envelope, for the purpose of identification only.

The Court: Very well.

The Clerk: Defendant's Exhibit I for identification.

(The document referred to was marked as Defendant's Exhibit I for identification.)

Miss Zacsek: And a letter and envelope on Selective [22] Service System stationery, signed by Eugene Corteau, Sr., and addressed to myself. It is a 1946 letter but I am unable to ascertain the date. I ask it be marked for identification only at this time.

The Court: What is the date?

Miss Zacsek: I can't distinguish it. It is blurred on the envelope. The stamp is smeared and blurred and the letter is without date. Perhaps during the recess, the noon recess, I might obtain a magnifying glass and seek to ascertain the date that way.

The Court: It may be marked for identification.

The Clerk: Marked Defendant's Exhibit J.

(The document referred to was marked as Defendant's Exhibit J for identification.)

The Court: Counsel, as I understand the stipulation of facts, in so far as count 1 is concerned, all the allegations of count 1 as to each defendant have been admitted except the part that the defendant did "knowingly fail and neglected to perform a duty under the act, and that he did

knowingly fail and neglect to report for induction into the armed services." In other words, everything has been admitted under count 1 except that which I just indicated—that is, except the intent and wilfulness.

Miss Zacsek: There is just a question of the date, may it please the court. I am sorry but I did not catch which [23] defendant the court was referring to.

The Court: Both defendants.

Miss Zacsek: Well, you see, the difficulty with that is this, your Honor: The dates—

The Court: But you have admitted that they were registrants of Local Board 199 and the questionnaire shows that they were classified 1-A and that they were given notice to report and that they did not report.

Miss Zacsek: Well, unhappily that is all very well as for Pete, but, it cannot be true of Salvador because, you see, there is a conflict now in the record between the evidence which is shown on the questionnaire of Pete Cervantes and the one shown on Salvador Cervantes. They are in conflict with the indictment.

Mr. Haughton: If the court please, that is a matter of law.

Miss Zacsek: Law? No, no.

Mr. Haughton: What counsel may think is a conflict I suggest perhaps it best be heard without the presence of the jury.

Miss Zacsek: It is not a conflict of law.

The Court: Just a moment. As I understand it, as to Pete Cervantes, all of the allegations of count 1 are admitted except the fact that he knowingly failed and neglected to report or to perform a duty. In other words, the only question [24] involved is intent and wilfulness.

Miss Zacsek: And the knowledge, that is right.

The Court: And as to count 1, as far as Salvador is concerned, under my understanding of the stipulation, all of the allegations of count 1 were stipulated to except knowledge and wilfulness.

Miss Zacsek: Yes. The face of the indictment is what I am talking about. There is a conflict which is in conflict with the stipulated evidence.

The Court: Where is the conflict?

Miss Zacsek: The date.

The Court: Let us see the questionnaire. Does that show a different date or different facts?

Miss Zacsek: Well, the facts show this on the indictment. It shows that on or about October 30, 1942, "he knowingly and unlawfully evaded service by departing from the United States."

The Court: I am not talking about count 2; I am talking about count 1 which says he was ordered to report for induction on October 8th.

Miss Zacsek: 1943. And that he received or he was notified—

The Court: Yes.

Miss Zacsek: But count 2 shows he had left the country a year before that. [25]

The Court: All that is necessary is to mail a notice to his last address and you have stipulated the notice was mailed to his last address.

Miss Zacsek: Yes.

The Court: So that under the law he had notice.

Miss Zacsek: Well, he had constructive notice.

The Court: He had constructive notice and that is all that is required.

Miss Zacsek: But I don't want to stipulate that he had actual notice.

The Court: I am not asking you to, but he was notified according to law.

Miss Zacsek: I will stipulate to that.

The Court: So the only question is—

Miss Zacsek: Knowledge and intent.

The Court: That is right.

Miss Zacsek: That is right.

The Court: It took a long time to get around to that but we finally did.

Miss Zacsek: Well, I am a little bit stupid, your Honor. I am sorry.

Now, about the other two counts—about Count 2.

The Court: Any other exhibits?

Miss Zacsek: No, I think not.

The Court: Counsel, a good many exhibits have been [26] to and I think that Government—counsel for the Government should now read to the jury those exhibits so the jury will know what they contain. Following that, counsel for the defendant may read her exhibits that have been admitted.

Miss Zacsek: May we reserve that until the proper time?

The Court: I think it is proper at this time; but if there is any oral testimony you want to put on so your witnesses may get away, you may do so.

Miss Zacsek: Thank you.

Mr. Haughton: Yes. I have two that I think are anxious to get away and I will accept the court's suggestion. Mr. Kellogg, will you take the stand, please?

STANLEY KELLOGG,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Stanley Kellogg.

Direct Examination

By Mr. Haughton:

Q. What is your occupation, Mr. Kellogg?

A. Probation Officer, United States Probation Officer.

Miss Zacsek: May I interrupt at this point? May it please the court, may I have leave to approach the bench for a moment with counsel? [27]

The Court: Yes.

(A conference was had between the court and counsel without the hearing of the jury.)

(The following proceedings were had in the presence of the jury:)

Q. By Mr. Haughton: Mr. Kellogg, did you have a conversation with Pete Cervantes, the defendant in this case, within the past few months?

A. Yes, I did. In fact I had two or three conversations with him.

Q. Will you state to the best of your recollection when the first conversation took place?

A. I believe it was—

The Court: May I ask is there any objection to leading questions as to conversations so as to confine it to the subject matter?

(Testimony of Stanley Kellogg)

Miss Zacsek: Yes, may it please the court. I think that is a very wise observation on the part of the court. I think the conversations should be limited.

The Court: We only want the conversations, Mr. Kellogg. The Government is interested in any statements that the defendant may have made to you relative to whether or not he was guilty or the extent of his participation in this offense. You will limit it to that.

The Witness: Yes, sir. [28]

The Court: The circumstances under which the statements were made may be brought out by counsel on cross examination.

Miss Zacsek: May it please the court, for the purpose of the record, may it be deemed that the defendants, and each of them, and particularly the defendant Pete Cervantes, objects to the question postulated both by counsel and the court and objects to any answer being given thereto.

The Court: Then, Counsel, I will withdraw my question and direct counsel to proceed to lay the foundation for the time, place, and parties present and what was said.

Miss Zacsek: May it please the court—

The Court: What I am trying to do, counsel, is accomplish that which you asked me to do.

Miss Zacsek: I know you are, your Honor. I simply, for the purpose of the record only, am objecting to the question asked by Mr. Haughton, counsel for the People.

The Court: On what ground?

Miss Zacsek: On the ground it is incompetent, irrelevant and immaterial in view of the exhibits heretofore introduced into evidence.

(Testimony of Stanley Kellogg)

The Court: Well, that does not preclude the Government from introducing additional evidence or additional corroboration. Objection overruled.

Miss Zacsek: Thank you, exception. [29]

Q. By Mr. Haughton: Mr. Kellogg, did the conversation you referred to take place in this building?

A. Yes, they did. They took place in Room 1401 which is our office.

Q. And on the first of such conversations who were present at the time? A. I believe—

Q. Will you just please give the names of those present?

A. Mrs. Anna Zacsek and Pete Cervantes. I don't recall whether his brother Salvador was there or not. I don't believe he was. I am not sure of that point.

Q. Mr. Kellogg, in the course of that conversation did you ask any questions and did the defendant in this case, Pete Cervantes, make any replies to such questions regarding his draft board and whether or not he departed for Mexico, and if so, for what purpose?

A. Yes, he did. I asked him precise, specific questions and he gave me specific, precise answers.

Q. Will you, to the best of your recollection and confining yourself—

The Court: Give us the sum and substance of what he said.

Q. By Mr. Haughton: Please relate what you said and what was said by the defendant? [30]

A. First of all I asked him regarding his family background and general questions pertaining to that and his life in general, which is required in this interview.

(Testimony of Stanley Kellogg)

Q. Never mind what was required, if you please, Mr. Kellogg. And I suggest that that be stricken.

The Court: Well, I don't think it should be stricken but you understand what is wanted. You have been in the courtroom and you understand the nature of the charges?

The Witness: Yes, sir.

Q. By Mr. Haughton: Now, did he discuss with you whether or not he had reported to his Board and why not, and anything about whether or not he had left the country and if so why?

A. He stated to me that approximately October 30th of 1942, he had left the country at the suggestion of his uncle, much against his own will and that he had gone down there more or less realizing that he should not, and after he had gotten to Mexico he stated he felt guilty all the time and realized that he had done wrong. And then I questioned him further regarding that point in several other conversations which followed. One was to the effect that his uncle was more or less acting as a father toward him; but he did state that his uncle had been in Mexico since 1932 and had made several visits to the country, to his home there, and on each of these occasions, he—especially after his marriage in 1942, more [31] or less suggested that he go to Mexico. The boy finally acquiesced and did go there but he stated all the time that he realized he was wrong and he felt guilty because he knew that the United States was really his home; that he had had his children here, had married his wife here and had more or less been raised here—gone to school here. He reached the 9th grade in the Hollenbeck Junior School and had been in clubs and various things and really felt

(Testimony of Stanley Kellogg)

he was more or less an ex-officio citizen of the United States.

I asked him how come when he was supposed to report on November 9th that he suddenly decided to leave on October 30th with only nine days left and his reason was he was influenced by his uncle but felt guilty all the time.

Mr. Haughton: That is all.

Cross Examination

By Miss Zacsek:

Q. Now, Mr. Kellogg, you say that there were other conversations—subsequent ones, is that right?

A. Correct.

Q. Now, there was a subsequent conversation, was there not, in which there was present the defendant, myself and Jean Corteau?

A. Correct.

Q. And at that time it was first brought up in a conversation by Mr. Corteau that both of these young men had [32] volunteered into the Army of Mexico and that in the course of that conversation it was stated by myself, in substance: "Why didn't you say this before?"

A. That is correct.

Q. And in that same conversation, in substance, Pete said that he did not consider that of any use here or in substance words to that effect—he had not considered it of any consequence?

A. That is right.

The Court: Counsel, there has been a lot of talk about their Mexican enlistment. Is it your contention that a person residing in this country and registering under our Selective Service Act, and has been ordered to report, can leave the country and go to Mexico and enlist in the Army and thereby escape service.

(Testimony of Stanley Kellogg)

Miss Zacsek: Certainly.

The Court: The court will hold against you on that and instruct the jury to the contrary.

Miss Zacsek: I respectfully take an exception.

The Court: You have a right to an exception but I just want to clarify the atmosphere a little bit because when he lived in this country, whether he was an alien or not, it was necessary for him to register and when he registered he submitted himself to his Board, and when that Board ordered him to report it was his duty to do so. [33]

Miss Zacsek: May it please this honorable court and for the purpose of the record and for the purpose of the defense, I respectfully take exception to the court's ruling and ask the record to show. And secondly, may the assertion on behalf of the defendants and each of them and for the purpose of the record, that the court's statement to the jury is in direct conflict with the agreement, a copy of which I have here, signed by Padilla and the United States.

The Court: That is the treaty arrangement but there are certain steps that must be taken and must be complied with.

Miss Zacsek: May it please the court, I have not concluded my objection and statement, if I may have that privilege.

The Court: You may have all the privilege you want.

Miss Zacsek: Secondly, I want the record to show my objection to the court's statement to the jury and take exception to it on the ground that it does not accurately state the law or the facts to the jury, as enacted in the

(Testimony of Stanley Kellogg)

Selective Service Act itself, and particularly in the Selective Service Act regulations, more particularly Section 611.

The Court: Please read it.

Miss Zacsek: I am not quite through, your Honor.

The Court: But nevertheless will you read the sections?

Miss Zacsek: But I want to get the subsection, if the [34] court will bear with me for just a moment. It is 611.13 and 611.21. Just a moment, please. I am sorry. I have so many instruments here that I am referring to. Oh, yes—and United States Code Annotated Title 50, Section 305 (a).

For the purpose of my objection that is all I wish to say.

The Court: Will you read those sections?

Miss Zacsek: Yes, your Honor.

(Reading) "A male alien who is now in or hereafter enters the United States who has not declared his intention to become a citizen of the United States is not 'a male person residing in the United States' within the meaning of Section 2 or Section 3 of the Selective Training and Service Act of 1940, as amended, provided:

"(1) He is a diplomatic representative, a technical attache of a foreign embassy or legation, a consul general, a consul, a vice-consul, or a consular agent of a foreign country."

Does the court wish me to read the entire thing?

The Court: Yes.

Miss Zacsek: Or "(2) He is a full-time official or employee of a foreign government and a national of the

(Testimony of Stanley Kellogg)

country employing him who has been notified to the Department of State; provided that at the time [35] he is notified to the Department of State, a proper representative of his government advises and after investigation the department of State and the Director of Selective Service agree that he is in fact not residing in the United States; or

“(3) The Secretary of State and the Director of Selective Service agree that he is a full-time official or employee of a recognized public international organization, who has entered the United States for the sole purpose of engaging in such employment and has been so engaged continuously since his arrival here, or has at all times during his stay in the United States and prior to his employment by such recognized public international organization been exempt from training and service under the Selective Training and Service Act of 1940, as amended.

“(4) He is a dependant male child under 21 years of age of any person described in subparagraphs (1), (2), or (3) of this paragraph; or

“(5) He is and was at the time of his entry into the United States in the active service of the Armed Forces of a co-belligerent or a neutral country; or

“(6) He is an individual designated or is [36] within a group of individuals described, by the Director of Selective Service as not required to present himself for and submit to registration; or

“(7) He has, within the time prescribed and in the manner provided in Section 611.21, filed with the Local Board with which he is registered, or if he is not regis-

(Testimony of Stanley Kellogg)

tered, with the Local Board having jurisdiction over the area in which he is located, an alien's Application for Determination of Residence (Form 302), together with an Alien's Personal History and Statement (Form 304), and such application is either pending or has resulted in the issuance by the Local Board of an alien's Certificate of Non-residence (Form 303) which has not expired.

“(b) Each alien in one of the categories described in subparagraphs (1), (2), (3), (4), (5), or (6) of Paragraph (a) must have in his personal possession, at all times, an official document issued pursuant to authorization of or described by the Director of Selective Service which identifies him as a person not required to present himself for and submit to registration and must exhibit it in the same manner and to the same persons as a registrant is required to exhibit a Registration [37] Certificate (Form 2) under Section 617.1.”

The Court: Now, may I ask is there any of those classifications which these defendants come under?

Miss Zacsek: Sure.

The Court: Which one?

Miss Zacsek: I did not mean to say sure—certainly. Now may I continue?

The Court: Yes.

Miss Zacsek: Just one moment. Section 611.21.

“What aliens may apply for a determination. Any non-declarant alien who has entered or who hereafter enters the United States in a manner prescribed by its laws, except a nondeclarant alien described in subparagraphs (1), (2), (3), (4), (5), and (6) of Section 611.13, may file with his Local Board, if he is registered, or with the

(Testimony of Stanley Kellogg)

Local Board where he is at the time located, if he is not registered, an Alien's application for Determination of residence, (Form 302); provided, that such application is filed within 90 days after the date of his entry into the United States or within 90 days after persons of his age become liable for training and service by law, whichever is the later; and provided further, that such application is filed prior to induction. An Alien's Personal History and Statement (Form 304) [38] must be filed with such application."

Now, just one moment, may it please the court. May I have a moment to confer with counsel?

The Court: There has been a good deal of conferring but I guess a little more will not hurt.

Miss Zacsek: United States Code Annotated, Title 50, 305.

Part of Paragraph 305 (a) reads:

"* * * and persons in other categories to be specified by the President, residing in the United States, who are not citizens of the United States, and who have not declared their intention to become citizens of the United States, shall not be required to be registered under Section 2 and shall be relieved from liability for training and service under Section 3 (b)."

Now, that goes on to say, if it please the court, as follows—no, just a moment. That is all that I wish to quote, may it please the court. I have concluded my quotations.

The Court: The ruling of the court still stands.

Miss Zacsek: May the record, please, show an exception?

(Testimony of Stanley Kellogg)

The Court: Under the new Federal Rules of Procedure, which have been in effect for some time, it is not necessary to take an exception. [39]

Miss Zacsek: Habit is a difficult thing to break, your Honor. I am sorry.

The Court: You may proceed with your cross examination.

Miss Zacsek: Thank you.

Q. Now, at that time it was said, was it not, in substance, by Pete that, yes, he had gone with his uncle to Guadajara and had promptly volunteered for service in the Army there?

A. I don't recall whether he said he had gone promptly or not.

Q. Well, do you recall anything that was said as to dates?

The Court: Well, counsel, the exhibits that you claim you have show the enlistment dates.

Miss Zacsek: Yes, your Honor.

The Court: They speak for themselves in that respect.

Miss Zacsek: Very well.

The Witness: I did say that he had tried to enlist and had signed up and I asked him why he had not brought that up in the first conversation and he didn't give me any answer as to that.

Q. By Miss Zacsek: And do you remember in substance Mr. Corteau saying to you that that was, in his opinion as a member of the Selective Service Board and as a worker between the two countries, that that was of most paramount considera- [40] tion and in his opinion should be made a test case?

(Testimony of Stanley Kellogg)

The Court: Who said that?

Miss Zacsek: Jean Croteau.

The Court: That would be hearsay.

Miss Zacsek: It is part of the same conversation, may it please the court.

The Court: Just a moment. You cannot bring in hearsay. That is what somebody else said. This witness is being questioned as to what the defendant said. I am not going to permit you to get in indirectly something the court has already ruled is inadmissible, unless you can show the defendant received the necessary certificates which exempted him from military service.

Q. By Miss Zacsek: Do you recall, Mr. Kellogg, among other things in discussing his family background and his marriage, that it was stated that he had denied being married to all persons concerned until he finally discussed the matter with the F.B.I. and they brought it up?

A. That is right. In fact he showed me a statement there that he had—a sworn statement, I believe—that he made to the Immigration officers or some official to the effect that he was single.

Q. Do you recall what he said in that connection about that as to any reason?

A. Yes, I do exactly. [41]

Q. Will you tell us?

A. He stated the reason he said he was single was that he at the time hoped to get into the Army and he felt if he said he was single there might be a better chance of getting in.

(Testimony of Stanley Kellogg)

Q. You remember also in that connection that he further stated that he was afraid that if he said he had children and a wife that people would think he wanted to get into the Army just to get the Government allotment to support them?

A. I don't recall that statement, no.

Q. Do you recall that in substance?

A. No, I don't.

Q. Do you recall in substance that he said that he was able to take care of them without Government subsidy or allotment?

A. Yes, he said that. And he also wrote that in a statement that I asked him to make, a written statement, and that he denied his marriage and denied his children so that it would facilitate his getting into the United States Army.

Q. You say he lied about it?

A. Well, he lied about it. In other words, he said he did not have a wife and did not have children.

The Court: That statement was made in the last two or [42] three months?

The Witness: Yes, sir.

Q. By Miss Zacsek: It does not make any sense, of course, but that was the reason he offered it—that it would be easier to get into the Army if he lied about it and said he did not have any family.

A. I believe that is what he said.

Q. Do you remember his stating to you among other things when he felt wrong about his going with his uncle, having been wrong, that he tried ever since that time,

(Testimony of Stanley Kellogg)

from the time he first got into Mexico with the uncle, to return and get into the United States Army?

A. Yes. He said he had tried to contact various people as to some way he could get back up here, but then he said the various individuals told him to forget about it; that he was a Mexican. So he said he more or less did and established himself in his business, the shoe business where he was doing very well and making possibly \$125.00 a week.

Q. That is right; but nevertheless do you remember that in spite of that he was still making efforts and it was through those efforts that Jean Corteau came to see him? Do you remember that? A. No, not exactly.

Q. All right. Will you tell us what you remember was said in connection with Jean Corteau contacting him in [43] the spring of 1945?

A. Mr. Corteau, as I understand—I thought he had contacted Mr. Corteau approximately in April or May as he did want to see if he could get in touch with his Draft Board. I believe he had his sister contact them and he thought that maybe Mr. Corteau could make arrangements for him to come back and contact his Draft Board.

Q. And that was in 1945?

A. May of 1945, I believe.

Q. And that he had told Mr. Corteau that he was a single man? A. Yes.

Q. I mean Mr. Corteau was present at this particular conversation? A. Yes.

Q. And in substance Mr. Corteau either acquiesced to the statements or supplemented them in substance, is that correct?

(Testimony of Stanley Kellogg)

A. Mr. Corteau did quite a bit of talking. It was difficult for me to understand him so I am not sure of everything he said.

Q. I mean he merely either supplemented or corroborated what Pete Cervantes said in the matter of questions and answers?

A. Yes, he did—he did that. [44]

Q. Now, in substance and effect then the conversation continued in this wise, that Pete and Mr. Corteau both stated that Mr. Corteau made several—had made several trips to Tia Juana in an effort to help Pete get into the Army as of that time?

A. Yes, he tried very many means to see if Pete couldn't and Pete had written letters himself, apparently, from what he told me.

Q. And that was in April or May of 1945?

A. Right.

The Court: It is now 12:00 o'clock and we will take a recess until 1:30. The jury will bear in mind the admonition of the court heretofore given.

(Whereupon, at 12:00 o'clock noon a recess was had until 1:30 o'clock p.m. of the same day.) [45]

Los Angeles, California, Wednesday, October 30, 1946
1:30 p.m.

The Court: Will you stipulate, gentlemen, the jurors are present in the jury box and the defendants are in court with their counsel?

Miss Zacsek: So stipulated.

Mr. Haughton: So stipulated, your Honor.

(Testimony of Stanley Kellogg)

The Court: You may proceed with your cross examination.

STANLEY KELLOGG,

called as a witness by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Resumed)

By Miss Zacsek:

Q. Mr. Kellogg, among other things that were said in this conversation to which you directed your testimony this morning, do you recall a conversation concerning Salvador Cervantes? A. No, I don't.

Q. Would this refresh your recollection if I suggested to you that in substance Pete discussed or told you that his brother Salvador at all times just did whatever he did and tagged along as a matter of course?

A. I don't recall that, no. I am sorry. We were mostly discussing Pete then. There was going to be another [46] case.

Q. I know we were discussing Pete but I was just trying to evoke from you some recollection.

The Court: He answered your question.

Miss Zacsek: Thank you, your Honor.

Q. By Miss Zacsek: Now, do you remember in substance your comment to the effect of what Pete had planned to do? You have already told us he said he tried to get into the Army and what was his plans or why did he come back. He told you in substance that he wanted to

(Testimony of Stanley Kellogg)

get into the Army and that was his purpose in returning here?

A. He stated that he always had a feeling of guilt. He felt that he had done wrong in following his uncle's suggestion and he did want to come back here right or wrong.

Q. I know. That was when you used the term "sort of ex-officio citizen of the United States", is that right?

A. Correct. That is correct.

Q. But he did not use the term "ex-officio"? That was your own interpretation of what he said?

A. Correct.

Q. In other words, what he said in substance was this, that in spite of the fact that he was a Mexican, a Mexican National, a Mexican Citizen and had been sold this idea by his uncle, nevertheless he felt that having grown up in this country that he was really a part of it even if he wasn't? [47]

A. He did not tell me that he had been sold the idea that he was a Mexican citizen or anything by his uncle, but his uncle had come up here several times on visits and that he more or less acquiesced with his uncle to go down just before he was drafted.

Q. But Pete did not use the word "acquiesce"?

A. He gave in to his uncle's desires.

Q. And he did not go into detail with you then, Mr. Kellogg, as to the uncle's conversation relative to the feeling of nationality? A. No.

Q. Do you remember him saying to you in substance that his uncle's children were still here in the United

(Testimony of Stanley Kellogg)

States but the uncle himself had gone back to Mexico because he felt that was where he belonged?

A. He did not tell me that but you wrote that in a statement that I asked for as to his family history. Yes, I believe they were living in San Diego.

Q. And do you remember his saying in substance to you that it was with the hope of entering the Army that he came back to the United States and surrendered himself?

A. That was the whole tone of his conversation because of the wrong that he felt he had done in giving in to his uncle because he realized he had done wrong all the time. He felt he should have gone into the Army. [48]

Q. Into the United States Army? A. Right.

Q. And that even now he was desirous—

The Court: That is not material, whether he is now or not. That is another question.

Miss Zacsek: Not this moment, but “now” as of the time of the conversation, your Honor—“now” relating to the conversation.

The Court: I think the atmosphere should be cleared as to Count 2. It is alleged that on or about certain dates for the purpose of knowingly and unlawfully evading service in the land and naval forces of the United States that he did knowingly and unlawfully depart from the United States and go to a foreign country.

The moment that he left this country with that intent the crime was complete.

Many a man has committed an offense and then been sorry for it and wished that he could back up, but after he has once committed the offense it is complete.

(Testimony of Stanley Kellogg)

Miss Zacsek: Certainly that is true as a matter of law, but now, may it please the court, since the court has brought this up. I again refer the court's attention to the law I have heretofore been permitted to read into the record and to the court and I wish to amplify that further with something which I touched upon but forgot. [49]

The Court: Counsel, just a moment. I have ruled and when the time comes you can present any requested instructions that you want which I can refuse or give to the jury.

We have taken about twice as long with this case as it should ordinarily take.

I think the court is partially to blame for that but I want to move the case along.

Miss Zacsek: So do I, may it please the court.

The Court: Let us get the evidence.

Miss Zacsek: There is this one thing, since the court brought it up. I respectfully move the court to consider the United States Statutes at Large, No. 57 of the 78th Congress, First Session, of 1943, in which there appears a treaty between the United States and Mexico relative to this subject and which is important in this matter, both as a matter of law and as a matter of fact, and which I think negatives what the court just now expressed as to what constitutes the right or wrong or what is a crime or not a crime in Count 2 of this particular indictment as to each defendant.

The Court: The court has ruled. Proceed.

Miss Zacsek: May I respectfully, before proceeding, just ask this one further question of the court just so that

(Testimony of Stanley Kellogg)

I understand the court? Does the court reject any consideration of this treaty?

The Court: When that question comes up you can submit [50] it in the form of an instruction and I will instruct the jury as to the law. I am ruling now on the admissibility of the evidence.

Miss Zacsek: Thank you.

The Court: The fact that he wanted to come back in 1945 or 1946 and join the Army does not excuse him for evading service.

Miss Zacsek: Not at all, but the treaty between the United States and Mexico is such that were he already in the Army—

The Court: Counsel, just a moment, let us understand each other. When the court rules the court does not want any argument unless it asks for it.

Miss Zacsek: Yes, your Honor.

Q. Mr. Kellogg, at the time that I referred to the conversation between Pete Cervantes, yourself, Mr. Jean Corteau and myself, was there then at that time a discussion or a statement of fact by Pete in substance, in which he said that he had returned to the United States for the sole purpose of endeavoring to get into the Army?

A. I don't recall whether he made that statement just then but it was made to me in a prior conversation, yes.

Q. And that he had come to this country to submit himself also to any possible prosecution which might ensue by surrendering himself? [51]

A. He said he realized that, yes, that he had done wrong and he wanted to come back and right that wrong.

(Testimony of Stanley Kellogg)

Q. Yes. A. After he had been there since 1942.

Q. That is right. He told you too, in substance did he not, that from the time that he first arrived in Mexico that he had discussed with his uncle the fact that it was a mistake and he wanted to go back where he belonged in spite of the fact he was a Mexican?

A. No, he did not state that. I don't remember it.

Q. Do you remember anything along that line at all, at any conversation, Mr. Kellogg?

A. He stated to me that he felt as soon as he left that he was wrong all along and when he got as far as Tia Juana he wanted to turn around and yet he just gave in. I mean he felt he was running away. That is it.

Q. Of course—but what I am trying to get at is this, that he said to you in substance that he even talked to his uncle about getting back and he told him he could not because he had no papers to get back on?

A. I don't recall that.

Q. Well, would you please search your recollection as to any conversation or writing he gave you to that effect, that he had told his uncle and he wanted to go back and that his uncle told him he could not get back because of the fact [52] he had no papers to get back on?

A. Well, he tried that himself. He tried, apparently, to get back but I don't recall when he tried. It seems like he had stayed there about three or four years before he actually made any attempt.

Q. That is what it seems to you. Now, I don't wish you to—

A. Well, the first actual attempt was in May of 1945 when he contacted Mr. Croteau.

(Testimony of Stanley Kellogg)

Q. That is the first time that Mr. Corteau was contacted but before that do you remember a conversation in which I said in substance to you, that he had gone to the American Consulate for papers and had orally been rejected and when I was down there on the other case that at that time I said, "Let us get some proof of that; go in there and get your papers and if they don't give them to you to have a witness to hear him say they are not giving it to you."?

A. Yes, that is right.

Q. To get a rejection in writing?

A. I recall that.

Q. Do you remember then that he had been there repeatedly before that and had been rejected orally?

A. No, I don't remember anything about whether he said how many times he had been there. I know he said he had been there once. [53]

Q. But you remember I told you—

The Court: We are not interested in what you told him. You were counsel for the defendant. That would be hearsay. It is the defendant's evidence that we want. It is the conversation the defendant had with this witness.

Q. By Miss Zacsek: Do you remember anything now that he said about people that he had asked—the American Consul—notaries—that is, the Mexican way to say it. Pete termed them as notaries who have offices in Tia Juana.

A. I remember he said he contacted several people but they stated "You are a Mexican; just forget that now and stay here and attend to your business," which he did.

Q. That is right. And did he tell you why he contacted those people whom he described as notaries?

(Testimony of Stanley Kellogg)

A. Because he felt he was guilty and wanted to come back and try to right a wrong.

Q. That is right. But what was he trying to get back for? Didn't he tell you he wanted to get back so he could get into the Army?

A. He might have mentioned that, yes.

Q. That is the point, Mr. Kellogg, that I am trying to bring out, the fact that he mentioned to you that he wanted to get into the Army and by getting into the Army he could right the wrong?

A. But he didn't want to get into the Army until around [54] 1945. That is the first I recollect is when he actually tried—really tried to get back.

Q. That was the time that he contacted Mr. Couteau but he had tried before that, remember, and when he gave up then he said he went into the shoe business because he could not get papers and they told him to forget it. That was before he went in the shoe business. Do you remember that, Mr. Kellogg?

A. I remember he went into the shoe business, yes.

Q. But you remember that it was before the shoe business that he said he came back to Tia Juana with the intent to try and cross the line to get into the Army?

A. Well, to tell the truth he did not do too much talking at all. I had to actually pump things out of him in my conversation with him alone.

Q. I am talking about the conversation when I was present and when Mr. Couteau was present also.

A. I guess he tried several times but wasn't successful.

The Court: We are not interested in what you guess.

(Testimony of Stanley Kellogg)

The Witness: I don't recall those facts.

Q. By Miss Zacsek: You have no present memory then of those statements, whether or not he said them or did not say them?

A. No, I don't. I am sorry but I just don't. [55]

Q. Well, thank you. After all, it is a lot to remember and it is difficult. Thank you, Mr. Kellogg.

The Court: Any further questions?

Miss Zacsek: Just one moment, may it please the court. Thank you very much, that will be all.

Redirect Examination

By Mr. Haughton:

Q. Mr. Kellogg, did he in substance state to you during any of these interviews that he went to Mexico to evade the draft here?

A. He didn't actually say so in so many words, but he knew and I know that he had.

Miss Zacsek: Move to strike the answer.

The Court: That will be stricken.

The Witness: I discussed it.

Miss Zacsek: May I have a ruling?

The Court: I struck the answer.

The Witness: I stated he went to Mexico just at the time when he knew he was supposed to report to his Draft Board and he went there against his will, more or less realizing he was doing wrong.

Mr. Haughton: That is all.

The Court: That is all. Call your next witness.

Mr. Haughton: Mr. George. [56]

The Court: While waiting for the witness you might read the exhibits. May it be understood that in the written exhibits either party may read any part they feel should be called to the attention of the jury?

Miss Zacsek: So stipulated.

Mr. Haughton: So stipulated.

Miss Zacsek: By the way, your Honor, while we are waiting I would like to introduce a photostatic copy of the treaty into evidence, please.

The Court: It is the law of the United States. It is not a part of the evidence. I think you should pass the registration slip to the jury and if there is no part of the questionnaire you expect to read to the jury I think you should hand that to them also.

Miss Zacsek: May I respectfully suggest that the questionnaire be submitted because I do want to read from it.

The Court: You will have an opportunity to read from it. You may proceed.

Mr. Haughton: Exhibit 4 is the original registration card of Pete Cervantes in which he gives his age as 21 years.

The Court: The card will speak for itself, counsel. Just pass it to the jury.

Mr. Haughton: Government Exhibit 1 is the original registration of Salvador Cervantes. Government's Exhibit No. 2 is the questionnaire of Salvador Cervantes and it shows [57] he was classified 1-A on September 11, 1943, and that notice of such classification was mailed to him on September 15th, 1943.

Government's exhibit No. 3 is a copy of the order to report for induction that was mailed to Salvador. And may it be stipulated at this time that neither Salvador nor Pete reported for induction as ordered?

Miss Zacsek: So stipulated.

Mr. Haughton: Government's Exhibit 5 is the questionnaire of Pete Cervantes. This shows that he was reclassified 1-A on October 19, 1942; that notice of that classification was mailed to him on the same date, October 19th, 1942.

Government's Exhibit 6 is a copy of the order to report for induction that was mailed to Pete Cervantes ordering him to report for induction on November 9, 1942.

Government's Exhibit 7 is the statement which Salvador made to the F.B.I. agent. It is dated Los Angeles, California, June 29, 1946, and reads as follows:

"I, Salvador Garcia Cervantes, make the following voluntary statement to Special Agent W. C. Skousen whom I know to be a member of the Federal Bureau of Investigation. No threats or promises have been made to me and I make the statement of my free will knowing it can be used in a court of law against me.

"I was born December 11, 1923, at LaDarca, [58] Mexico. I came to the United States when I was one year old and lived here continually until 1942.

"On June 30th, 1942, I registered with Local Draft Board 200, which was located at that time in the Roosevelt High School Building, East Los Angeles. My file was transferred to Local Board 199 and a card dated Septem-

(Government's Exhibit No. 7)

ber 15, 1943, was sent to me notifying me that I was in 1-A classification. However, I had left the United States with my brother Pedro, November 30th, 1942, so my parents kept this draft card until I returned. I left the United States with my brother Pedro who had been ordered up for induction and had already received his papers. I knew I was violating the law by going to Mexico and not keeping my draft board advised of my whereabouts. My parents did not know where we were either, so mail from the draft board could not be forwarded to me.

"In November or December, 1945, my brother and I tried to obtain visas to return to the United States. I intended to come back and get into the Army if I could get myself straightened out with the draft board. However, our request for a visa was refused. We therefore came back to the United States without permits. My brother Pedro and I [59] crossed the border at San Ysidro, California, July 14, 1946.

"I know I violated the law in leaving the country without notifying my board as required by the Selective Service and Training Act. I am now willing to serve in the Army or be subject to any decision of the United States Government concerning my case.

"I have read the above statement consisting of two pages. It is a true statement on the facts as I know them."

That is signed "Salvador G. Cervantes".

And it is witnessed by W. Cleon Skousen, Special Agent, F.B.I., Los Angeles.

Government's Exhibit No. 8 is the transcript of a hearing held before the Immigration and Naturalization Service. It is so entitled, "Immigration and Naturalization Service, United States Department of Justice, District No. 16. File No. 1600-31760. It is dated at Los Angeles, July 24, 1946.

The Court: The jury cannot hear you.

Mr. Haughton: I beg your pardon, sir.

The Court: I know some of the jurors are having difficulty in hearing you.

Mr. Haughton: This is a sworn statement made by [60] Salvador Garcia Cervantes in the English language and reads as follows:

"Immigration and Naturalization Service

"U. S. Department of Justice

"District No. 16

"Los Angeles, California

"July 24, 1946

"File No. 1600-31760

"Sworn statement made by Salvador Cervantes-Garcia in the English language before Inspector Earnest A. McFadden in the office of the Immigration and Naturalization Service, Los Angeles, California on July 24, 1946.

"Present: Earnest A. McFadden, Examining Inspector.
Salvador Cervantes-Garcia, Alien
Winifred Lewis, Stenographer.

"By examining inspector to alien:

"Q. I am an Immigrant Inspector of the United States Immigration and Naturalization Service and de-

(Government's Exhibit No. 8)

sire to question you under oath concerning your status under the Immigration laws of the United States. Any statements which you make must be voluntary and may be used by the Government as evidence in any deportation or criminal proceeding. Are you willing to make such a statement freely and voluntarily under oath?

"A. Yes. [61]

Salvador Cervantes-Garcia, being first duly sworn, testified as follows:

Q. You are informed that if you wilfully and knowingly give false testimony at this proceeding, you may be prosecuted for perjury, the penalty for which is imprisonment of not more than five years or a fine of \$2000, or both such fine and imprisonment. Do you understand the warnings? A. Yes.

Q. What is your full, true and correct name?

A. Salvador Cervantes-Garcia.

Q. Have you ever used or been known by any other name? A. No.

Q. When and where were you born?

A. I was born in La Barca, Jalisco, Mexico, December 11, 1922.

Q. Of what country are you a citizen?

A. Mexico.

Q. What are your parents' names; in what country were they born; and what is their citizenship?

A. Father, Antonio Cervantes; born in La Barca, Jalisco, Mexico; he is a citizen of Mexico; mother, Placida Garcia; born in La Barca, Jalisco, Mexico; citizen of Mexico. [62]

(Government's Exhibit No. 8)

Q. Have your parents ever been citizens of any other country? A. No.

Q. What is your marital status? A. Single.

Q. What is your occupation? A. Mechanic.

Q. What is your present address?

A. 137 S. Utah Street.

Q. When and where did you last enter the United States?

A. July 14, 1946 about a half a mile west of the gate at San Ysidro, California.

Q. Were you in possession of an unexpired immigration visa? A. No.

Q. Did you present an unexpired passport or official document in the nature of a passport issued by the government of the country to which you owe allegiance or any other travel document showing your origin and identity?

A. No.

Q. Did you present a valid visa, reentry permit, or border crossing identification card? A. No. [63]

Q. Were you inspected and admitted by an Immigrant Inspector? A. No.

Q. For what purpose did you enter the United States?

A. I wanted to get that clear the thing about the delinquency case.

Q. Was it your intention to reside permanently in the United States?

A. I wanted to get everything straightened out.

Q. Have you ever been admitted to the United States for permanent residence?

A. I don't know, but I think I was.

(Government's Exhibit No. 8)

Q. When and where?

A. I think that was at El Paso in 1923. I was only a year old, and I don't know where we crossed the line.

Q. Have you ever been excluded from the United States or deported or granted voluntary departure in lieu of deportation?

A. No.

Q. Have you ever been arrested?

A. I was arrested in an accident; that is all. I wrecked my brother's car.

Q. When was that? [64]

A. About 1940 in Los Angeles.

Q. What were you charged with at that time?

A. The brakes didn't work, so I had to pay a fine or 8 days in jail. I was also arrested for violation of the Selective Service Act on July 15, 1946 at Los Angeles, California.

Q. Have you ever registered under the Selective Service and Training Act of 1940?

A. Yes, at Local Board No. 200 in Los Angeles, California.

Presents: Notice of Classification from Local Board No. 199, Los Angeles, County, 2334 Brooklyn Avenue, Los Angeles, California, which indicates that Salvador Garcia Cervantes, Order No. N-13153, was classified 1-A September 15, 1943.

Q. When did you receive this classification card?

A. I got it when I came home Sunday.

Q. Have you ever received any orders to report for induction in the Armed Forces of the United States?

A. No.

(Government's Exhibit No. 8)

Q. When did you depart from the United States for Mexico? A. October 30, 1942.

Q. Where did you cross the international boundary line at that time? [65]

A. At the same place where I came back in 1946, approximately one-half mile west of the gate at San Ysidro, California.

Q. Why didn't you attempt to leave the United States through the regular port of entry at San Ysidro, California?

A. Because I didn't think they would let us pass through.

Q. Why did you go to Mexico on October 30, 1942?

A. An uncle of ours took us down there.

Q. Why did he take you to Mexico?

A. I think he didn't want us to go in the Service—I don't know. He said there may be some kind of business over there.

Q. Did your uncle force you to go to Mexico with him? A. No.

Q. Did you desire to depart for Mexico at that time?

A. No, I didn't.

Q. Then why did you depart to Mexico?

A. I always used to follow my brother, and he went with my uncle, so I went too.

Q. What was your draft classification at the time that you departed to Mexico? [66]

A. I didn't have any.

Q. Had you ever considered entering the Armed Forces of the United States? A. Yes.

(Government's Exhibit No. 8)

Q. You have stated that you went to Mexico because your brother went to Mexico, and because your uncle took you to Mexico. Did you have any other reason for going to Mexico? A. No.

Q. Did you depart to Mexico near San Ysidro, California on October 30, 1942 because you did not want to enter the Armed Forces of the United States?

A. I didn't depart for that; I wanted to get in the Army, but like I said before, I followed my brother.

Q. If it was your desire to enter the Armed Forces of the United States, can you explain to me why you departed from the United States on October 30, 1942 and remained in Mexico until July 14, 1946?

A. My brother was fixing with a man named Eugene when the war was on to cross us over there and put us in the Army, and I was waiting for my brother to get his papers, and me and my brother were going to get in the Army. Eugene was fixing it up for my brother to get in the Army, and he was going to fix me up too. [67]

Q. Then, you wish to state under oath that your sole reason for departing to Mexico was to follow your brother? A. Yes.

Q. Did you think that by departing to Mexico you would be able to enter the Armed Forces of the United States? A. During the war, yes.

Q. Will you explain to me how you thought you would enter the Armed Forces of the United States while residing in Mexico?

A. Like I said, Eugene was fixing the papers to come over and get in the Army.

Q. Why did you remain in Mexico from October 30, 1942 to July 14, 1946? A. To avoid the Service.

(Government's Exhibit No. 8)

Q. Did you have any other reason for remaining in Mexico? A. No.

Q. Where did you reside in Mexico during that period of time?

A. 356 Avenue 'E', Tiajuana, B. C., Mexico.

Q. Did you reside there continuously from October 30, 1942 until July 14, 1946?

A. No, we went up to the interior and then we [68] came back.

Q. Did you ever enter the United States during that period of time? A. No.

Q. Then, I would like to repeat one question. When you departed to Mexico on October 30, 1942 near San Ysidro, California, did you have any reason for leaving the United States? A. To avoid the draft.

Q. You have previously stated in this statement that you did not go to Mexico to avoid Service in the Armed Forces of the United States. Are you now changing your story? A. Yes.

Q. Then, do you admit that you departed to Mexico near San Ysidro, California on October 30, 1942 for the sole purpose of avoiding service in the Armed Forces of the United States? A. Yes.

Q. Did you have any other reason for departing to Mexico at that time that you would like to state at this time? A. My brother was going.

Q. Did you ever try to communicate in any way with your Local Draft Board here in Los Angeles? [69]

A. Yes.

Q. When? A. About a year ago.

(Government's Exhibit No. 8)

Q. In what manner did you communicate with them?

A. A man over there, I think he was a Vice Consul in the American Consul in Mexico, he wrote a letter to the Local Board for me, and they said that they did not want me in the Armed Forces, and that I was classified 4-C.

Q. Where did you live during the six months immediately preceding your last entry into the United States.

A. Tiajuana, B. C., Mexico.

Q. Do you have any property or personal effects in the United States other than that with you?

A. No, sir.

Q. Does anyone in the United States owe you money?

A. No, sir.

Q. Is anyone in the United States dependent upon you for support?

A. No, sir.

Q. Have you understood the questions asked you?

A. Yes.

Q. Are you willing to sign this statement? [70]

A. Yes.

Q. Do you wish to say anything else? A. No."

And that is signed by Salvador G. Cervantes.

My witness is here now, if your Honor please.

The Court: Very well, you may put him on the stand.

Miss Zacsek: May I consult with Mr. Haughton a moment before we proceed?

The Court: Yes.

Mr. Haughton: Mr. George.

PAUL O. GEORGE,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Paul O. George.

Direct Examination

By Mr. Haughton:

Q. Mr. George, what is your occupation?

A. United States Federal Probation Officer.

Q. And were you such in September, August and September and October of this year? A. I was.

Q. Did you during that time have occasion to interview and talk with Salvador Garcia Cervantes? [71]

A. I did.

Q. Did that conversation take place in this building?

A. Took place in the Federal Probation Office on the 14th floor.

Q. And when did the first conversation take place, if you recall?

A. I think it was around September 12th.

Q. That is of this year? A. 1946.

Q. And who were present at the time?

A. There was the two Cervantes boys, Pete Cervantes and Salvador Cervantes.

Q. Anyone other than yourself and those two?

A. On one occasion the attorney was present.

Q. Will you state the substance of the conversation to the best of your recollection in reference particularly to the defendants' status with the draft board and the reasons for going to Mexico?

(Testimony of Paul O. George)

A. Well, we went over in detail concerning the immigration report, which you read here a few moments ago. The most important item we wanted to cover in detail was why the boys left the United States. They admitted to me it was the fact that they did want to evade the draft, and that they had been influenced by the uncle; they admitted that they were of age and certainly knew what they were doing; that they [72] were mentally capable of knowing it was an evasion.

The main topic covered—the second topic covered was what attempts they had made to contact the Draft Board in Los Angeles where they had originally registered. It appears that there was a lapse of approximately two years, they admitted.

The Court: You say they said that?

The Witness: Yes.

The Court: Who said it?

The Witness: Pete Cervantes.

The Court: And was Salvador Cervantes present?

The Witness: Salvador was present. I get the two boys confused. It is Pete that we are talking about.

The Court: I asked you about the conversation with Salvador.

The Witness: All right, Salvador. Salvador admitted to me that he made no attempt whatever to correspond in writing with the Draft Board here in Los Angeles.

It was brought out in the conversation that Salvador well knew the address here, apparently—I mean, he did not want to contact the Draft Board.

Miss Zacsek: Just a moment. May I ask if that statement or opinion by the witness—

(Testimony of Paul O. George)

The Court: Give us the substance of what he said to you.

Miss Zacsek: May we have that clarified, your Honor? [73]

The Court: All we want is the substance of the conversation or any admissions or statements that Salvador made to you.

The Witness: Well, those were the statements.

The Court: Is that the substance of it?

The Witness: Yes, substance of the statement.

Mr. Haughton: That is all.

Cross Examination

By Miss Zacsek:

Q. Mr. George, during this conversation and others that you had with these boys, particularly the one in which I was present, was there a conversation on the part of Salvador to the effect that he had always followed his brother and had permitted his brother to do his acts for him? A. Yes, there was.

Q. During that conversation—and in fact I will refer to all of the conversations in toto rather than to pick out the different conversations. During the conversations, Mr. George, is it not a fact that it was stated that Peter Cervantes, the older brother, had contacted a Mr. Jean Corteau, who was a member of the Selective Service Board in National City and all the negotiations of contacting the local Los Angeles Board was done for him by Pete through Mr. Corteau?

A. Well, there were conversations to that—what you [74] are talking about, but there was no factual evi-

(Testimony of Paul O. George)

dence that I could find that this third party who you refer to had ever made any contact with the Draft Board.

Q. You yourself never talked to Mr. Corteau?

A. No.

Q. And you of course then had no possession of any documents which Corteau might have had or not had?

A. That is true.

Q. You said that—just a moment, please, Mr. Haughton. If the court will bear with me I want to get a piece of paper.

Now, Mr. George, you said, I believe, that you had the statement made by Salvador to the United States Department of Immigration and Naturalization?

A. Yes, sir.

Q. You remember you said you went over this carefully and in detail. And do you remember a statement in there that the question was: "If it was your desire to enter the Armed Forces of the United States can you explain to me why you departed from the United States on October 30, 1942 and remained in Mexico until July 14, 1946?" And the answer was: "My brother was fixing with a man named Eugene when the war was on to cross us over there and put us in the Army and I was waiting for my brother to get his papers and me and my brother were going to get in the Army. Eugene was fixing it [75] up for my brother to get in the Army and he was going to fix me up too."

Do you remember that?

A. Well, we did not cover that in detail because I didn't know who Eugene—who he was referring to.

Q. Didn't you ask—

A. I was very interested—

(Testimony of Paul O. George)

Q. Just answer the question. Did you ask?

A. No.

Q. Why not, if I may inquire, Mr. George?

A. For the simple reason we were dealing with Mr. Corteau who was the one supposedly contacting the Draft Board.

Q. You know or you had stated that in your opinion the Army would not have taken Salvador in in any event because he was sub-normal mentally, isn't that right, Mr. George?

A. No, I didn't know definitely then, naturally.

Q. I did not say "definitely".

A. All right, no.

Q. In substance isn't it a fact you stated to me what I have just suggested to you? A. No, I did not.

Q. Did you state it in any other terminology, Mr. George?

A. Well, I said he should have gone down and tried to [76] get in. I said that whether they would have taken him, that would have been up to them.

Q. Oh, yes, I know but—

The Court: Just a moment, just a moment. Don't argue with the witness. He answered your question.

Q. By Miss Zacsek: I want to fix in your mind whether or not in my presence while Salvador was present, that in a lowered tone of voice you said to me in substance the following: "He should have gone up there because they would not have taken him anyway because he is sub-normal mentally."?

A. I said, "It is too bad he did not go down to the Army and try to get in."

(Testimony of Paul O. George)

Q. "Because they would not have taken him anyway because he is sub-normal mentally." Did you or did you not say that?

A. I am not a medical examiner; I could not make a prediction like that.

Q. It is not a question of what you could or couldn't do or said. Did you say that? A. No, I did not.

The Court: Answer the question yes or no.

The Witness: No.

Q. By Miss Zacsek: Mr. George, may I ask you this then— [77]

The Court: He answered your question.

Q. By Miss Zacsek: Whether or not you stated to me this—you had given him a questionnaire to fill out and evidently he had sat there for some time, for some considerable time and finally got two or three words on the questionnaire, whereupon you stated to me that in your opinion the man was sub-normal mentally because if I would note the incredible length of time it took for Salvador even to write out two or three words. Now, does that refresh your memory?

A. It was not put in that language.

The Court: In substance?

The Witness: In substance I said, "It is too bad he can't fill this form out." I said, "I can't understand it."

Q. By Miss Zacsek: That is right. Didn't you say in substance that it took an unreasonably or unbelievable length of time for him to get two or three words down?

A. Yes, I did.

Q. And do you remember I said, "Yes, I know that. That is the reason that I filled out most of the forms for him." Do you remember that? A. Yes.

(Testimony of Paul O. George)

Q. And you remember it was in connection—in that connection that you then said, “Well, I am afraid he couldn’t get into the Army because he seems to be so sub-normal [78] mentally.”

A. I said, “It is too bad he has not gone down to the Army because he probably would not have been taken in.”

Q. That is right.

A. But that is not a fact.

Q. I did not ask for a fact.

The Court: Just a moment, counsel, just a moment. I have warned you sufficiently and just because you happen to be a woman does not give you any special privilege in this court. Now, just confine your questions to questions without arguing with the witness. There is no occasion for dramatics in asking questions.

Miss Zacsek: Yes, your Honor. Yes, your Honor.

Q. Was it your opinion then, Mr. George, merely your opinion, that Salvador was somewhat under par from the normal, average mentality?

The Witness: Will you read the question?

(Question read.)

The Court: I direct the witness not to answer the question. That does not have anything to do with the issues in this case. There is no plea of insanity here.

Miss Zacsek: No.

Q. Mr. George, when you examined this statement that I have just read from the statement given by Salvador to the Department of Immigration and Naturalization Service, their [79] representative, and you came across the words, “Mr. Eugene,” do you recall in that connection that during your conversations with Salvador

(Testimony of Paul O. George)

that Salvador had used the words "Mr. Eugene" constantly in reference to Corteau or in reference to the man who was helping Pete?

Mr. Haughton: I object to that as assuming a fact not in evidence and calling for an opinion of the witness.

The Court: Let the witness answer it if he knows.

The Witness: I made no connection with Jean. All I have reference to is what you said, "Mr. Corteau."

Q. By Miss Zacsek: You knew of course Mr. Corteau's name was Jean Corteau? A. No, I did not.

Q. Did you see any letters at all purportedly written to Mr. Corteau by Pete or Salvador? A. Yes.

Q. Can you recall the substance of any of those?

The Court: Counsel, the letters are the best evidence. Are they the ones introduced in evidence here?

Miss Zacsek: Yes.

Q. I am going to show you a series of papers, Mr. George, and ask you whether any of these has been presented for your consideration before this? A. Yes.

The Court: Just answer the question yes or no. [80]

The Witness: Yes.

Q. By Miss Zacsek: Let me show you all of them, please, Mr. George, and then perhaps you can select from these various exhibits for identification those which you have seen before. A. These.

Q. Which ones, Mr. George, please? The ones on your right? A. The ones on the right.

Q. Then you had seen the letter dated April 2nd, 1946 at San Ysidro, addressed to Pete Cervantes and signed by Eugene Corteau, Sr., "S. S. Board No. 165"?

A. Yes.

(Testimony of Paul O. George)

The Court: If you will refer to them by exhibit number it will keep the record straight.

Miss Zacsek: Thank you, your Honor. That is Defendants' Exhibit E for identification.

Q. By Miss Zacsek: You had seen a letter then addressed, or this being Defendants' Exhibit I for identification, addressed at San Ysidro, July 23rd, 1946 to Anna Zacsek and signed "Eugene Corteau, Sr., Member of the Selective Service Board No. 165, San Ysidro, California." A. That is correct.

Q. And both of these documents to which you have testified by saying yes, both numbers I and E for identification have been printed on the letterhead of the Selective Service Board, is that right?

A. That is correct.

Q. Now, in that connection, Mr. George, do you now recall having examined these documents and had your memory refreshed that you had a conversation relative to this Jean Corteau, Sr., and that he was referred to by both Salvador and Pete Cervantes as "Mr. Eugene"?

A. No; I just remember Mr. Corteau.

Q. Then as far as you were concerned you never in your mind at least, connected the two individuals, the two names as being one individual? A. No.

The Court: Counsel, this witness is under cross examination for conversations that he had and I am going to restrict the cross examination to that.

Miss Zacsek: Thank you, your Honor.

Q. Now, Mr. George, did you at any time see the piece of paper which lies before you on the desk which has the two photographs on it of Pete, on both—of both the front and side views? A. Yes.

(Testimony of Paul O. George)

Q. And in that connection do you remember that Salvador told you or, I will withdraw that question and ask you if you had also at that time seen this little piece of [82] paper which I now place before you?

A. I am not positive I remember seeing this exhibit.

Q. Referring to Defendants' Exhibit I for identification. Would this refresh your recollection, Mr. George, if I suggested to you that at the time of the conversations with Salvador he showed you this piece of paper which he said was a photostatic copy of the original which was his volunteering into the Mexican Army?

A. Yes, he showed me that.

Miss Zacsek: Now, I move the court to introduce this piece of paper as the defendants' exhibit next in order.

Mr. Haughton: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Miss Zacsek: Then I move respectfully to introduce it for the purpose of identification at this time.

The Court: It may be marked for identification.

(The document referred to was marked as Defendants' Exhibit I, for identification.)

Q. By Miss Zacsek: In that connection Salvador told you among other things—

The Court: What is the date of that document?

Miss Zacsek: If I may look at the original; this is so dim I cannot read it even with my glasses and I was unable to get a magnifying glass during the recess—23rd of December, [83] 1942.

Q. By Miss Zacsek: Now, in that connection did Salvador tell you when he and his brother and his uncle

(Testimony of Paul O. George)

arrived in Guadalajara that he volunteered into the Mexican Army? A. That is what they told me.

Q. And that that little paper which purports to be a photostatic copy of Defendants' Exhibit E for identification, was his certificate or copy of the certificate of his volunteering into the Army, is that right?

Mr. Haughton: Object to that.

The Court: Read the question.

(Question read.)

The Court: Objection sustained.

Q. By Miss Zacsek: What I should have asked you, of course, Mr. George, was this: Did he tell you that that was a photostatic copy of the original he received when he volunteered into the Army?

A. Well, that is what he told me.

Q. What? A. I say, that is what he told me.

Q. Thank you. Now, when this matter of the paper which you said you had gone over very carefully with him, on page 5 of the same questionnaire of questions and answers of Salvador Cervantes, before the Naturalization Agent or [84] Department of Naturalization rather, do you remember this question asked of Salvador and this answer which appears on this paper:

"Did you ever try to communicate in any way with your local Draft Board in Los Angeles?"

"A. In Los Angeles?"

And the answer was: "Yes."

"Q. When? "A. About a year ago.

"Q. In what manner did you communicate with them?"

"A. A man over there, I think he was a Vice Consul in the American Consul in Mexico, he wrote a letter to the

(Testimony of Paul O. George)

Local Board for me and they said that they did not want me in the Armed Forces and that I am classified 4-F."

Mr. Haughton: 4-C.

Miss Zacsek: I beg your pardon. Thank you. I am glad you brought that up.

Q. Now, do you remember that particular phase of the questioning? A. Yes, sir.

Q. Did you discuss with Salvador as to who this person in the American Consulate was who had attempted to, or who had written a letter for Salvador?

A. No, I did not. [85]

Q. Did you ask him anything about the letter which he said had been written in which they said he was classified 4-C and that they did not want him?

A. Will you repeat that?

Q. I will reframe it. Did you say or inquire of Salvador as to who this letter which he had mentioned, which had been purportedly sent by the Board saying he was not wanted?

A. No, I did not question him about it.

Q. During the conversation with Salvador and with Pete in which—and the conversation which I attended, in substance and effect did Salvador tell you that he had relied and depended upon Pete to effect whatever negotiations could be made for them both as far as communicating with the Local Board was concerned?

A. No, he did not say it in those words.

Q. Well, in substance or in effect, Mr. George?

A. Well, he could have employed it but he didn't say it in words as a fact.

Q. All right then, did he imply it in his conversation?

(Testimony of Paul O. George)

The Court: Let us get the conversation and not what was implied. You objected to that this morning when the other witness was on the stand.

Miss Zacsek: Thank you.

Q. Did he say anything in substance, Mr. George, or in [86] effect that he was relying upon his brother Pete for all the activity, if any, that was done in relation to communicating with the Selective Service Board?

A. I did not get that impression at all. Definitely not. He was being talked to as an individual and could answer as an individual for himself.

Q. Yes, of course, but I don't think you have understood my question, Mr. George. What I am trying to get at is this. He told you among other things that his brother was negotiating with a Mr. Eugene? A. He did.

Q. And that his brother was corresponding with a Mr. Eugene? A. He did.

Q. And that Mr. Eugene, or mostly he called him Jean, Mr. Eugene would come from San Diego to Tia Juana and talk to his brother? A. That is correct.

Q. And Mr. Eugene was writing letters to the Board for Pete? A. That is right.

Q. And in substance that Mr. Eugene was a member of the Selective Service Board in National City or in San Ysidro? A. That is correct.

Q. Now, did he then also tell you that he depended on [87] Pete and Mr. Eugene to take care of him, Salvador? A. I don't remember.

Q. Did you hear him state in substance or effect that he believed that when Mr. Eugene got Pete straightened out that he would be straightened out also?

(Testimony of Paul O. George)

A. Yes, that phase of it—you are correct there.

Q. Thank you.

The Court: Any further questions?

Mr. Haughton: No further questions.

The Court: That is all.

Mr. Haughton: Government's Exhibit No. 9 is the statement which Pete Cervantes gave to the agent of the F.B.I. It is dated July 29th, 1946, and reads as follows:

At the top of the page it is dated July 29th, 1946:

"I, Pete Garcia Cervantes, do make this voluntary statement to Edward E. Kachelhoffer, who has identified himself to me as a Special Agent of the Federal Bureau of Investigation, and who has further advised me that I do not need to make a statement and if I do make a statement it may be used in court as evidence. No threats or promises of any kind have been made to me to obtain this statement.

"I was born August 12th, 1919, at La Barca, Mexico. I was brought to the United States by my parents in 1923. I never returned to Mexico until [88] October 30, 1942. From 1923 until October 30, 1942, I lived in the United States with my parents, Antonio Cervantes and Placida Garcia at 137 South Utah Street, Los Angeles, California, for about ten years.

"I attended Utah Street grade school and Hollenbeck Junior High School and Frank Wiggins Trade School until I was 18 years old and then I started working.

"I worked for Swift & Co., Brown Derby, Furniture Land, Y. Gomez Market and in my own meat market lo-

(Government's Exhibit No. 9)

cated at Brooklyn and Boyle. The last employment I had before going to Mexico was with Swift & Co. I quit my employment with Swift & Co. the day before I left for Mexico and gave as a reason for quitting that I was going into the United States Army. I registered under the Selective Training & Service Act in Los Angeles on October 16, 1940, giving my address as 137 South Utah Street, Los Angeles. I am a registrant of Local Draft Board No. 199 in Los Angeles. I was given a Selective Service blood test about the middle of October 1942, and about two weeks later I received a 1-A classification, and shortly thereafter I received a notice to report for induction on November 9, 1942.

"I received the order to report for induction [89] about a week prior to October 30, 1942, the date on which I left Los Angeles for Mexico. The date on which I was to report for induction was November 9, 1942. The reason that I left for Los Angeles at the time for Mexico was to avoid induction into the military service of the United States. I entered Mexico at Tijuana on October 30, 1942, passing through the immigration station at San Ysidro, California. My brother, Salvador, and my uncle, Trinidad Garcia, were with me. We traveled in my uncle's automobile. While I was in Mexico I lived in the State of Jalisco and in Tijuana, B. C. While in Mexico I worked as a butcher for a short time and later purchased a pool hall which I sold and purchased a shoe repair shop. The shoe repair shop is located in Tijuana and I still own the shop. In my absence the shop is being operated by David Valencia who I think left the United States to avoid military service.

(Government's Exhibit No. 9)

"Before I went to Mexico the only property I owned was a 1937 Dodge sedan which I sold in October 1942. About December 10, 1945 I started making inquiries as to my draft status in the United States and if I might go into the Army if I returned. I wrote my draft board in December 1945 as to my status and was advised they could take no action in the [90] matter. Finally I decided to return to the United States after I gained the impression from talking to people in Tijuana that I would be permitted to join the United States Army. I returned to the United States the morning of July 14, 1946, crossing the border near San Ysidro, California. I did not pass through the immigration Port of Entry at San Ysidro because I had no visa, passport or other papers.

"I have read this two-page statement and it is truth and correct."

That is signed "Pete Garcia Cervantes."

Following that Government's Exhibit 10 is a transcript of the proceeding held in the office of the Immigration and Naturalization Service in reference to Pete Cervantes. It is entitled "Immigration and Naturalization Service, U. S. Department of Justice, Los Angeles District 16. No. 1600-31759" and is dated July 24, 1946.

The Court: Counsel, it is almost impossible to hear you.

Mr. Haughton: I will attempt to do better. This is a sworn statement of Pete Cervantes and reads as follows:

"Q. You are advised that I am an Immigrant Inspector of the United States Immigration and Naturaliza-

(Government's Exhibit No. 10)

tion Service, and as such am authorized by law to administer oaths in connection with the [91] enforcement of the Immigration and Naturalization laws. I desire to take a statement from you under oath, concerning your right to be and remain in the United States. Any statement you make should be voluntary, and you are hereby warned that it may be used as evidence in any subsequent proceeding, either criminal or deportation. Do you understand the nature of an oath? A. Yes.

Q. Are you willing to make a statement and answer questions under these conditions? A. Yes.

"Pete Cervantes-Garcia, being first duly sworn, testified as follows:

Q. What is your full, true and correct name?

A. Pete Cervantes-Garcia.

Q. Have you ever used or been known by any other name? A. No, sir.

Q. When and where were you born?

A. I was born in La Barca, Jal. Mexico either August 11, 1919, or August 12, 1919.

Q. Of what country are you a citizen?

A. Mexico, I guess.

Q. What are your parents' names, birthplaces [92] and citizenship-

A. Antonio Cervantes, born in Mexico; citizen of Mexico; Placida Garcia, she was born in Mexico; she is deceased, but she was a citizen of Mexico.

Q. Have they ever been citizens of any other country?

A. No, sir.

Q. What is your marital status? A. Single.

(Government's Exhibit No. 10)

Q. What is your occupation?

A. I am a butcher and shoe repair man.

Q. What is your present address?

A. 137 So. Utah St., Los Angeles, California.

Q. When and where did you last enter the United States?

A. I crossed the border from Tijuana on July 14, 1946, about a mile west of the gate at San Ysidro, California.

Q. Were you in possession of an unexpired immigration visa? A. No, sir.

Q. Did you present an unexpired passport or official document in the nature of a passport issued by the government of the country to which you owe allegiance or other travel document showing your [93] origin and identity? A. No, sir.

Q. Did you present a valid visa, reentry permit, or border-crossing identification card? A. Never did.

Q. Were you inspected and admitted by an Immigrant Inspector? A. No, sir.

Q. For what purpose did you enter the United States?

A. To come and get in the United States Army, sir.

Q. Was it your intention to reside permanently in the United States?

A. Yes, if I could get in the Army.

Q. Have you ever been admitted to the United States for permanent residence?

A. When I was a small kid in 1923.

Q. Where were you admitted to the United States at that time? A. I think at Laredo, Texas.

(Government's Exhibit No. 10)

Q. Have you ever been excluded, or deported from the United States or granted voluntary departure from the United States in lieu of deportation?

A. No, sir, never did. [94]

Q. Have you ever been arrested?

A. Yes, I was arrested for violation of the Selective Training and Service Act at Los Angeles, California on the 15th of July, 1946.

Q. Have you ever registered under the Alien Registration Act of 1940? A. Yes, sir.

Q. Do you know your Alien Registration number?

A. No, sir.

Note: File shows number as 3222154.

Q. Have you ever registered under the Selective Training and Service Act of 1940?

A. Yes, sir. At local board 199.

Q. Where is No. 199 located?

A. Whittier Blvd., Los Angeles, California.

Q. Do you know your order number? A. 4664.

Q. Where did you live during the six months prior to your entry to the United States on July 14, 1946?

A. I lived at 356 Avenue E, Tijuana, B. C., Mexico.

Q. Do you have any property or personal effects in the United States other than that with you?

A. Yes, at 137 S. Utah, I have a suit. [95]

Q. Does anyone in the United States owe you money?

A. No.

Q. Have you ever received orders to report for induction into the armed forces of the United States?

A. Yes, sir, I did, sir.

(Government's Exhibit No. 10)

Q. When did you receive these orders for induction?

A. I think on November 9, 1942.

Q. What did you do when you received these orders to report for induction?

A. I went down to the Local Board to get a defferrment for 30 days, I was turned down, sir.

Q. Then did you report for induction into the armed forces of the United States?

A. No, sir.

Q. What did you do?

A. An uncle of ours came from Mexico and took us there.

Q. When did you depart to Mexico?

A. On October 30, 1942, because it was on Hallowe'en.

Q. Where did you cross the International Boundary Line?

A. Thru the river about one mile west of the gate. [96]

Q. Why did you depart to Mexico at that time?

A. Because an uncle of ours was coaching us to go over there.

Q. Did you have any reason of any kind for going to Mexico at that time?

A. To avoid the draft—Selective Service Training.

Q. Did your uncle force you to go to Mexico with him at that time?

A. No, he didn't force us to go.

Q. Then do you admit that you departed to Mexico near San Ysidro, California on October 30, 1942, for the sole purpose of avoiding service in the armed forces of the United States?

A. Yes, sir.

(Government's Exhibit No. 10)

Q. Did you have any other reason for going to Mexico at that time? A. No, sir.

Q. Did you reside continuously in Mexico from October 30, 1942 until July 14, 1946? A. Yes, sir.

Q. What was your purpose in remaining in Mexico for that period of time?

A. Well, I had no immigration to come across at that time, and I didn't have no papers to come [97] across until I met Mr. James from Local Board 165 at San Ysidro, and he said he was going to help me.

Q. Why did you decide to return to the United States on July 14, 1946?

A. To get in the army, sir. I have been trying to come across, sir.

Q. Were you aided in any way by any person to enter the United States? A. No, sir.

Q. Are you supporting anybody in the United States at the present time? A. No, sir.

Q. Is there any person in the United States who is dependent upon you in any way for support?

A. No, sir.

Q. Have you understood all the questions I have asked you here? A. Yes, sir.

Q. Are you willing to sign this statement?

A. Yes, sir.

Q. Do you wish to say anything else at this time?

A. No."

And that is signed "Pete G. Cervantes".

The Court: At this time we will take our afternoon recess of ten minutes, and the jury will bear in mind the [98] admonition the court has heretofore given you.

(Short recess.)

The Court: Will you stipulate the jurors are present and in the jury box and the defendants are in court with their counsel?

Miss Zacsek: So stipulated, your Honor.

Mr. Haughton: So stipulated.

Miss Zacsek: It has been brought to my attention the two defendants have not been clearly distinguished, so may I at this time identify them and each of them?

The Court: Yes.

Miss Zacsek: Will you arise? This is Peter Cervantes, and this is Salvador Cervantes.

Thank you, your Honor.

Mr. Haughton: If the court please, I think I have completed reading all the matters introduced by the Government of any consequence, except miscellaneous items that can be examined later if the jury wishes, and with that the Government rests.

The Court: You may proceed.

Miss Zacsek: Will you take the stand, Mr. Peter Cervantes?

PETE G. CERVANTES,

having been first duly sworn by and on behalf of the defendants, was examined and testified as follows: [99]

The Clerk: Please state your name.

The Witness: Pete G. Cervantes.

Direct Examination

By Miss Zacsek:

Q. Mr. Cervantes, where were you born?

A. In La Barca, Mexico, August 12, 1919.

Q. And when were you brought to the United States as best you know?

A. I was brought to the United States with my parents in the year of 1923.

Q. Did your father, as far as you know, ever become a citizen of the United States? A. No.

Q. Did he ever, as far as you know, attempt to become such a citizen? A. No.

Q. Did you yourself—are you yourself a citizen of the Republic of Mexico? A. I guess so.

Q. And as far as you are concerned have you ever made any attempt to become a citizen of this country?

A. No.

Q. And have you at any time or place declared your intention to become a citizen? A. No. [100]

Q. When you were required to register under the Selective Service Act I take it you received a piece of paper which is introduced here as Government's Exhibit 5, which has printed on the head of the first sheet the words "Selective Service Questionnaire", is that correct?

A. That is right.

(Testimony of Pete G. Cervantes)

Q. And in this questionnaire there appears on certain lines in between the printed material handwriting in ink. Is that your handwriting? A. That is right.

The Court: Where are you referring to?

Miss Zacsek: The part written in longhand.

The Court: You are speaking of the part of the form that was filled in?

Miss Zacsek: Yes, on the lines in ink which appear between the printed material, which is printed on the pages of this questionnaire.

Q. All this ink handwriting is your handwriting, is that correct? A. That is right.

Q. Now, in this handwriting and on page 4 under the heading "Family Status" and "Dependents" there is stated "None". There appears certain printed words in front of that—in front of some little squares as follows: "I am" square "Single". Square "Widower". Square "Divorced". Square "Married". And so forth. Also "I" and then a [101] blank "live with my wife",

Now, in that particular line of printed material there appears to be an ink check in the space marked "Single". Did you place that check there? A. I did.

Q. I will then call your attention to page 6 which in printing appears the word "Citizenship" and under that are eight numbers with printing and bear lines. In other words, the printing on No. 1 says: "I was born at" blank in which in writing in ink appears the following words: "La Barca, Jalisco, Mexico." Did you put that in?

A. That is right.

The Court: You wrote in everything which says you were born in Mexico and that you were not a citizen of the United States?

(Testimony of Pete G. Cervantes)

The Witness: That is right, your Honor.

Q. By Miss Zacsek: You have here, "I am not a citizen of the United States."

And No. 5: "I am a citizen or Subject of La Barca, Jalisco, Mexico" and "My alien registration number is 3222154."

Under No. 7 you have written: "I have not" and then in printing "filed a declaration of intention to become a citizen of the United States" and then in parentheses "first paper." Then in printing "Declaration filed at" [102] and then a blank and there appears in handwriting the word "None", and printing "on month, day, year", and again there is a blank in which the handwriting appears "None".

Now, did you under 7 of this particular heading "Citizenship" write in the words "None, none, none,"?

A. I did.

Q. And on No. 8 again we have the handwriting—

The Court: So the jury will understand, why don't you have him point out that he has written: "I am not a citizen, I have not filed any papers." In other words, you said "None, none, none," and that does not mean anything to the jury. He said, "I have not filed a declaration of intention to become a citizen of the United States. Declaration filed at none." Is that your handwriting there?

The Witness: Yes, sir.

The Court: And you have also written in: "I have not filed a petition for naturalization" and under "Petition filed at" you wrote "None" and so forth?

The Witness: That is right.

(Testimony of Pete G. Cervantes)

Q. By Miss Zacsek: Now this paper, on the last sheet thereof, on page 8, you have signed your signature and you evidently signed it and swore to that before one Nathan Klein at the advisory board No. 199, is that right?

A. That is right.

Q. In other words, this questionnaire was filled out [103] by you as it now appears and was sworn to by you and signed by you in front of a member of the Advisory Board of Local Board No. 199?

A. That is right.

Q. And at that time did you have with you or in your possession an alien registration bearing the number which should appear here, 3222154?

A. I did.

Q. And previous to the time that you had then filled this blank you had registered under the alien registration law of the United States, is that correct?

A. That is right.

Q. Now, at the time and place where you signed this questionnaire and swore to it before a member of the Advisory Board of Local 199, did you at that time know or had anybody told you that being an alien that you had a right to claim exemption from the draft because of the fact that you were an alien?

A. No, I didn't.

Q. Did anybody advise you at that time and place that because you had declared that you were not a citizen, that you had never declared a desire to become a citizen and that you had at no time or place filed a petition to become a citizen that therefore you were not a resident within the meaning of the law?

A. No. [104]

Q. Did you know anything whatsoever about the fact that there was in the Selective Service Board or Selective

(Testimony of Pete G. Cervantes)

Service Training Act, rather, an exemption which would cover your case inasmuch as you were a non-resident within the meaning of that Act?

Mr. Haughton: I object to that as it assumes both a fact and a matter of law.

The Court: Objection sustained.

Q. By Miss Zacsek: Had you heard at any time or place that the United States had in the Selective Service Act made a provision for people like yourself who were not residents or citizens of this country—

Mr. Haughton: Object to that as immaterial and incompetent.

The Court: Same ruling.

Q. By Miss Zacsek: Did Mr. Nathan Klein who attested to your signature on the 25th day of June, 1923, talk to you at all about the matters which appear under the heading of "Citizenship"? A. Never did.

Q. Did any member of the Advisory Board of Local 199 on this day say anything to you whatsoever about the fact that you had an alien registration number and card?

A. Never did.

Q. Did anybody at that time or any time before that [105] tell you anything about the facts as pertaining to you of alien citizenship in relation to the Draft Board—draft law? A. Never did.

Q. Did you have any knowledge about it at that time whatsoever? A. No.

Q. Did you have any knowledge about it at that time whatsoever? A. No.

Q. Now, to get back to your residence for a moment in Mexico. You said you lived there until you were about three years old, is that right? A. Yes.

(Testimony of Pete G. Cervantes)

Q. And then came here? A. Yes.

Q. Did you have an uncle? A. I did.

Q. And what relation—and what—I withdraw that, please.

Did this uncle accompany you and your family to California, if you know? A. He did.

Q. Did this uncle have any children of his own?

A. He did. [106]

Mr. Haughton: I object to that as incompetent, irrelevant and immaterial.

The Court: Well, it is answered.

Mr. Haughton: Move the answer be stricken for the purpose of the objection.

The Court: It is too late. He may have had some grandchildren for all we care.

Miss Zacsek: Well, it is merely a foundation. It is of no particular moment in any event.

The Court: Proceed.

Q. By Miss Zacsek: Now, where did this uncle stay, if you know, during the first few years that you people lived in California?

Mr. Haughton: Object to that as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Q. By Miss Zacsek: Did this uncle, as far as you know, depart back to the Republic of Mexico?

A. He did.

Mr. Haughton: Objected to.

The Court: Well, it is answered.

Q. By Miss Zacsek: When was that, Pete?

(Testimony of Pete G. Cervantes)

The Court: Counsel, I understand from the statement here this uncle is dead?

Miss Zacsek: Yes, he is. [107]

The Court: He is not on trial here today. Let us try these two defendants. About their having an uncle is immaterial. He can tell why he went to Mexico if he did, but we are not interested in his uncle anymore than we are in his grandparents. That has nothing to do with the facts in this case.

Miss Zacsek: May it please the court—

The Court: We are trying everybody but these defendants.

Miss Zacsek: That is right, I am not interested in the uncle. The difficulty I am confronted with is this—in the questionnaires given by these boys—may it please the court, in this there is so much reference to this uncle. I thought the jury might get a foundation of who this person was and that is all.

The Court: There has been a great deal said about the uncle but it hasn't anything to do with whether or not these defendants violated the Selective Service Act. It may be interesting to the jury but it isn't very interesting to the court. The jury may want to listen to it, but the court doesn't.

Q. By Miss Zacsek: Now, Pete, if you know—

If the next question is out of line I am sure the court will bear with me, but I think this is material.

Did this uncle return from Mexico and have conversations with you relative to going with him to Mexico? [108]

A. He did.

(Testimony of Pete G. Cervantes)

Q. How often did he return and have such conversations?

A. He was there about, maybe, two weeks, one month or a month and a half apart.

Q. Apart? A. Apart.

Q. How many conversations occurred during these intervals of time?

A. Well, every time he used to come he used to come and say the same thing.

Q. How often did he return, Pete, to talk to you?

A. Every two weeks, maybe a month.

Q. How many talks did you have altogether then?

A. Oh, say about—there were plenty. That is all he used to talk of.

Q. All right. Now, in these conversations who was—was Salvador present? A. He was not.

Q. Just you? A. Right.

Q. And were these conversations virtually the same on each occasion? A. That is right.

Mr. Haughton: Objected to as incompetent, irrelevant and immaterial and there is no proper foundation laid. [109]

The Court: The question of intent is involved. I am going to give pretty broad latitude. I am going to permit the question to be answered.

Miss Zacsek: Will you read the question?

(Question and answer read.)

Q. Now, Pete, you were given a registration card, that is right, isn't it, bearing the date of December, or, I mean, pardon me, June 30th, 1942? That is right, isn't it?

A. Yes.

(Testimony of Pete G. Cervantes)

Q. At the time that you were given this card did you receive it in person or was it sent to you through the mail?

The Court: What do you mean by "registration card"?

Miss Zacsek: Yes, this People's Exhibit No. 1.

The Court: Selective Service card. As a matter of practice they had to register. We know they go to some board and register. Even an old fellow like me had to go and register and sign one of those cards and carry a card.

Q. By Miss Zacsek: And did you sign this card in Local 199? A. I did.

Q. Now, at the time you signed this did anybody there speak to you in any fashion about your status as an alien? A. Nobody did.

Q. Or what the provisions were which the United States had made for people like yourself? [110]

A. No.

Q. Then calling your attention to People's Exhibit No. 4, which is the registration report, when and where did you first see that? A. When I registered in 1940.

Q. And they gave you that, did they?

A. They gave me this.

Q. And at that time did anybody speak to you about your status as an alien or what the United States, if anything, had done about people like yourself?

A. Never did.

Q. Now, what did this uncle say to you and what did you say to him—

The Court: I am not going to permit that. I do not intend to permit those conversations. You are trying to

(Testimony of Pete G. Cervantes)

bring out a conversation with a dead man. It is too far fetched.

Q. By Miss Zacsek: Pete, during the years that you grew up had you been with this uncle during any part of those years from the time you came to the United States until you left with him?

A. Up to the year of 1932.

Q. Up until that time? A. Yes, sir.

Q. How old were you when he left? [111]

A. I was about 12 or 14, I think.

The Court: I can't hear you.

The Witness: About 12 or 14.

Q. By Miss Zacsek: Now, during those—

And this I think is important, your Honor.

The Court: You do not need to emphasize it. That is a question for the jury, the importance of anything.

Miss Zacsek: I am addressing myself to the court.

The Court: But the jury hears you just the same.

Miss Zacsek: This is as to intent.

Q. During those years, Pete, did your uncle live with you? A. That is right.

The Court: That is, up until 1932?

The Witness: That is right, your Honor.

Q. By Miss Zacsek: In this household your mother was dead by that time, wasn't she? A. She was.

Q. Now, in the household which consisted of your brother, sister, father and this uncle, who was the head of the house? A. My uncle.

Q. Did your father come under his jurisdiction so to speak?

(Testimony of Pete G. Cervantes)

The Court: Counsel, this offense was committed in [112] recent years. There is no occasion to go into the matter of who was the head of the family. This man is a man who is charged with an offense. Let us get down to the issues in the case.

Miss Zacsek: May I respectfully make an offer of proof?

The Court: No, you may submit it in writing. I do not care to have it made in front of the jury. You may submit it in writing and present it to the court in the morning.

Miss Zacsek: Thank you.

Q. How had you been conditioned or taught, rather, to regard the voice or the orders or directives of your uncle?

The Court: Just a moment. Do not answer that question.

Counsel, I do not expect you to pursue that any longer.

Miss Zacsek: Very well, your Honor.

Q. Your uncle came the last time to speak to you. What if anything did he say or do as far as your judgment is concerned concerning going back to Mexico?

The Court: Just a moment. I am going to direct the witness not to answer that question. I don't care what the uncle said to him. Let him tell why he went to Mexico if he did go. He can explain it in his own way as to why he went to Mexico.

Miss Zacsek: All right.

Q. You did go to Mexico, of course? [113]

A. I did.

Q. With your uncle? A. That is right.

(Testimony of Pete G. Cervantes)

Q. Now, following the court's suggestion I am going to ask you to tell the jury and the court why you went in as much detail as the court will allow.

A. Shall I start in, your Honor?

The Court: Go ahead.

A. Well, it was this way. I was going into the Army then. I had an automobile accident, see, and I was in bed and I told my wife to go out and get a 30-day deferrment, which they denied me. Well, at that time when they called me I had an automobile accident in which I was in bed and I couldn't get up. I sent my wife to get a 30-day deferrment which they denied me and this uncle, he comes over and says, "You are crazy, you want to stay here. They will kill you. You better come over there. I got business and everything up there for you," and I was in bed and I was sick so I went up there. My wife was pregnant and everything was all mixed up. I guess I just felt that I was getting a rotten break.

The Court: The uncle advised you to go to Mexico to keep from getting killed?

The Witness: That is right, your Honor.

The Court: And you followed his advice, did you?

The Witness: I did. [114]

The Court: And that is the reason you went to Mexico, so you would not have to go into the Army, is that right?

The Witness: That is right, your Honor.

Q. By Miss Zacsek: All right, Pete. Before this had occurred did you make any effort to get into the defense plants?

(Testimony of Pete G. Cervantes)

The Court: Just a moment. That is immaterial, counsel. There are two charges, here.

Miss Zacsek: That is right.

The Court: He is not charged with failure to work in a defense plant.

Miss Zacsek: That is right.

The Court: That question is immaterial.

Miss Zacsek: I will proceed.

Q. All right, Pete, at that time what if anything was said or done about your brother Salvador?

A. Well, he wasn't present at the time we used to talk.

Q. All right, when you departed with your uncle did Salvador go along? A. Yes, he did.

Q. Now, will you tell us in your own words if you know how it happened that Salvador went with you?

A. Well, he was a young kid yet and by the time you could come back and get into the Army— [115]

Q. Who said that?

A. "By the time you are called you can come back and get into the Army."

Q. Who said that? A. I did.

Q. All right.

A. He was only 19 and they were calling boys from 21 and up at that time.

Q. During your lifetime what was your relationship to your brother as far as any direction was concerned?

A. Well, I was a bigger brother and he used to do what I tell him to do.

The Court: That was not my experience when I was a young fellow. I did just the opposite from what my big brother told me to do. But that is immaterial to this hearing.

(Testimony of Pete G. Cervantes)

Miss Zacsek: All right.

Q. So you went to Mexico with this uncle. Did you yourself have any papers, documents or otherwise to get into Mexico? A. No.

Q. How did you get into Mexico?

A. Well, we pass through the line in a car.

Q. Whose car? A. My uncle's car. [116]

Q. Did you speak to anyone as you passed through the line?

A. No; I just pass—we just passed, that is all.

Q. Where did you go? That was Tijuana?

A. That is right.

Q. Where did you go from there?

A. We went to Mexico.

Q. Where? A. Guadalajara, Mexico.

The Court: How soon after you crossed the line did you go to Guadalajara?

A. Three weeks or a month.

The Court: How long did you remain there?

The Witness: Well, I remained there waiting—you see, they going to call me in the Mexican Army.

The Court: How long did you remain? A week or a month?

The Witness: No, about eight months.

The Court: And then you returned to Tijuana?

The Witness: No, we stayed about 8 months in Guadalajara.

The Court: Then you returned to Tijuana?

The Witness: That is right.

The Court: And you remained there until you came back to the United States?

(Testimony of Pete G. Cervantes)

The Witness: That is right, your Honor.

Q. By Miss Zacsek: Now, when you went to Guadalajara [117] did you do anything about the Mexican Army? A. We volunteered in the Mexican Army.

Q. If you do not speak up I cannot hear you across the room and I am certain I couldn't hear any of the conversation you had with the court.

A. Well, I volunteered in the Mexican Army.

Q. Now, I am going to show you that piece of paper which has been here introduced as an exhibit, it being the defendants' Exhibit No. F for identification, and ask you what that piece of paper is? A. (No answer.)

Q. Did you receive it? A. I did.

Q. And when did you receive it?

A. The day I volunteer.

Q. From whom did you receive it?

A. From, well, the military officer.

Q. From a military officer? A. Yes.

Miss Zacsek: I now move to introduce that into evidence, your Honor.

Mr. Haughton: Objected to on the grounds it is incompetent, irrelevant and immaterial.

The Court: The objection will be sustained. I am still taking the position I took this morning that he cannot go [118] across the line to Mexico and offer to volunteer into the Mexican Army and avoid his responsibility to this Government.

Miss Zacsek: And I am still taking the position of the treaty between the governments as being paramount to any opinion of counsel or courts, unless we have the

(Testimony of Pete G. Cervantes)

most authoritative voice on that subject, your Honor, and I say that with the utmost respect.

The Court: I am not worrying about respect. Go ahead.

Miss Zacsek: I just want the court to know I do bear the court profound respect.

The Court: The only thing is, there are certain steps under the law that he could take in volunteering for the Mexican Army, but there is no evidence here that he took those steps. He submitted himself to the Selective Service of this country and he is subject to the laws of this country just so long as he had not complied with the other regulations.

Miss Zacsek: But again it is the position of the defendant that this Government provide due process for each person in this country, be he a citizen or not, and that due process of law—

The Court: Well, I do not think a person can come here when he is three years of age and enjoy the advantages of this country and then when the time comes for him to assume some of the responsibilities of a person residing in this country, cross the line and escape that responsibility [119] just as easily as you seem to indicate.

Miss Zacsek: I have not indicated that. It was the Congress of the United States that indicated that, your Honor, not me. I did not write the laws. The Congress did. I did not promulgate them. The Congress did. I did not write an opinion on those laws, Judge Peirson Hall did. I did not write the treaty. I had nothing to do with it. In fact I only found out about it after I was well under way in this case.

(Testimony of Pete G. Cervantes)

The Court: Proceed.

Miss Zacsek: Thank you.

Q. By Miss Zacsek: All right, Pete, while you were in Guadalajara did your uncle die? A. He did.

Miss Zacsek: This is leading but I am only doing it to expedite matters because it is already in the record that he died. All right, he died.

Q. Now, before his death did you have any conversation with him, or did you say to him in substance anything—

The Court: Just a moment. Conversations with the uncle I have already ruled are not admissible.

Miss Zacsek: All right.

Q. Did you after you got to Mexico—that is, to Tijuana, or Guadalajara, did you do or say anything about the United States, the draft and returning? [120]

A. I did.

Q. All right, what did you say or do during those periods of time—first in Tijuana and then Guadalajara up to the time your uncle died?

Mr. Haughton: Objected to on the ground it is incompetent, irrelevant and immaterial and even if it were there is no foundation laid as to whom he said it to. I don't know whether he was talking in his sleep or to himself or what.

The Court: Objection sustained.

Miss Zacsek: All right. It is already in the record that he did something about it.

Q. Where did you do something about it?

A. Well, I thought if I joined—

Q. Not what you thought, Pete. You have to answer the questions carefully and just as I ask them. I asked

(Testimony of Pete G. Cervantes)

you whether in Tijuana or Guadalajara at any time before your uncle's death did you say or do anything about returning to the United States to join the United States Army? Will you answer that yes or no.

A. Well, it was in Tijuana when we came over here.

Q. In Tijuana? A. That is right.

Q. After you crossed the line and before you went to Guadalajara? A. That is right. [121]

Q. What if anything did you say or do, or to whom did you say or do something about that?

A. Well, I told my uncle I want to come back right away but then he said I have no papers and the immigration is going to grab me and throw me back again to Mexico.

Q. Did you believe that?

A. I had no papers at all.

Mr. Haughton: Object to that.

Q. By Miss Zacsek: After you left Tijuana and Guadalajara did you say or do anything about returning?

A. I did.

Q. Where in Guadalajara was that?

A. Well, there in Guadalajara, in the town.

Q. With whom did you have such conversation or with whom did you have any activity in regard to that?

A. My uncle.

Q. When was that, Pete?

A. It was when we went up there to Guadalajara.

Q. When you first arrived? A. Yes.

Q. Or after you arrived?

A. When we first arrived.

(Testimony of Pete G. Cervantes)

Q. All right. How long after your arrival?

A. Right away, because I did not like the rooms or anything there, see? [122]

Q. What did you say or do?

A. I want to come back right away.

Q. All right.

The Court: You did not like the country, did you?

The Witness: No, your Honor.

Q. By Miss Zacsek: What did you say, your Honor?

The Court: I asked him if he didn't like the country and he said he didn't.

Q. By Miss Zacsek: What, if anything, happened then?

A. Well, I was investigating to see how I could come back to the United States but nobody could tell me anything.

Q. What did you do about investigating it?

The Court: Counsel, just a moment. Pete was ordered to report for induction on November 9, 1942. Now, his conduct after that time would have nothing to do with whether or not he failed to report in accordance with the order. And on Count 2, under his own statement, and I believe it was Hallowe'en of 1942 that he crossed the line, he said here he did that to get away from reporting to his draft board.

Now, the offense was completed at that time and what he did afterwards, in my point of view, is immaterial. If he intended at that time to cross the border and go into Mexico for the purpose of avoiding military service, that is when the offense was complete and when he failed to report on November 9, 1942. The offense was complete

(Testimony of Pete G. Cervantes)

at that time [123] and what he did afterwards is immaterial to the issues in this case.

Miss Zacsek: May it please the court, I have been under this impression, having represented defendants in the Federal Court during the war, when the question of the distinction between being absent without leave and being a deserter arose, and those issues I have tried in this Federal jurisdiction, and as I understood the law at that time—I will very frankly state to the court that I have not tried any such issue since then, but during the course of the war the distinction between—

The Court: Counsel, I have ruled.

Miss Zacsek: Yes, of course the court has ruled.

Well, may I say this, your Honor, for the sake of the record? I would like to introduce evidence, since it is already in the record in the exhibits, I would like to give this defendant an opportunity to explain and to give testimony in court under oath on the very things he was asked by the F.B.I. and the Department of Naturalization, because it seems to me that it is very important whether or not he made any effort to get back when he could have reported back, whether it was a day or a week or a year.

The Court: When he failed to report on November 9th, if he did fail to report on that day, wilfully and knowingly, the offense was complete, and when he left the United States [124] for the purpose of evading military service, and he testifies that was on the 30th of October, 1942, and that that was his purpose of going at that time, it becomes a question for the jury. The offense was complete and what he may have done to try to correct his error is not a matter for the jury, but it is a matter

(Testimony of Pete G. Cervantes)

for the court to take into consideration in the event that he is guilty of the offense charged.

Miss Zacsek: All right. Then I take it we will be given the opportunity, your Honor, to take this questionnaire and each of them that was submitted to this defendant by the different departments and the agents of this Government and give him an opportunity to explain them. Is that correct? Am I correct in my assumption?

The Court: If there had been an objection made to the introduction of those documents I would have sustained it. I have let a lot of material go into the record that is totally immaterial, but as long as they are in the record under stipulation I will let the witness explain them.

Miss Zacsek: I respectfully ask, may I hear the court's ruling again? I did not catch it over there.

The Court: Will the reporter read my statement?

(Statement read.)

Q. By Miss Zacsek: When you entered the United States at the border at Tijuana on the 14th of July of this [125] year, had you then been advised as to what you must do or could expect would happen to you if you came through without legal permission? A. I was.

Q. You had made a formal application for a non-quota visa from the American Consulate at Tijuana as shown by the Defendants' Exhibit B for identification, is that correct? A. That is right.

Q. Now, before that had been issued to you, that is this paper showing that your application had been denied, had you made any other formal—any other request from the American Consulate? A. I did.

(Testimony of Pete G. Cervantes)

Q. And this instrument—was that obtained by you or was that obtained by counsel for you?

A. Counsel for me.

Q. You had never been able to get one on your own before, is that correct? A. That is right.

Q. I mean they—I mean as far as even the refusal, they refused to put on paper the refusal, is that right?

A. That is right.

Q. Now, what were you told when you came to the United States? That is, before you came—if you came as to what would happen to you? [126]

A. Well, they say they are going to put me in jail or be prosecuted.

Q. What was your purpose in coming to the United States? A. Well, to get into the Army.

The Court: But you knew you might be prosecuted too, didn't you?

The Witness: That is right.

Q. By Miss Zacsek: Now, were you further advised that if you came up that you must immediately surrender to some authority of the United States Government?

A. I did.

Q. Pursuant to that advice did you, upon coming into Los Angeles, surrender? A. I did.

Q. How? By what means?

A. Well, we went down to your office. You called up the F.B.I.

Q. A little louder, please?

A. We came down to your office and you are the one that called up the F.B.I. man.

Q. When you arrived? A. That is right.

(Testimony of Pete G. Cervantes)

Q. And you waited there for them?

A. Yes. [127]

Q. And they arrived? A. That is right.

Q. After they got there did you have a talk with them? A. I did, yes.

Q. And that was in the presence of your attorney?

A. That is right.

Q. And in the presence of your brother?

A. That is right.

Q. Subsequently did you have a conversation with the gentlemen of the F.B.I. without your lawyer?

A. Yes, when we went up there to make the statement.

Q. Now you knew, did you not, that you did not have to say anything; that you had counsel and you could keep your face shut? A. That is right.

Q. But nevertheless, that it would be better practice for you to freely and fully state everything to both the Department of Immigration and the F.B.I.?

A. That is right.

Q. And so you did that? A. That is right.

The Court: And the statement you gave them was true?

The Witness: Well—

The Court: Was it true?

The Witness: Well, some of it and some of it ain't. [128]

The Court: What part is not true?

The Witness: Well, that—I have to read it again, I guess.

The Court: What is that?

(Testimony of Pete G. Cervantes)

The Witness: They didn't believe me when I told them I wanted to come here long before.

The Court: Will you read the questions and answers?
(Several questions and answers were read.)

The Court: Did you tell them as stated in the statement that you went to Mexico to evade military service in this country?

The Witness: Well, that is the first time.

The Court: Did you tell them that? Answer yes or no.

The Witness: Yes, your Honor.

The Court: Then I call your attention to this—this is your signature on Defendants' Exhibit B, is it not? Is this your signature?

The Witness: That is right, your Honor.

The Court: And you made this application, did you not?

The Witness: Yes, sir.

The Court: And you state in the application: "I claim to be exempt from exclusion on account of the class or classes noted above, for the reasons following, to-wit:

"In November 1942 I wilfully and knowingly departed from the jurisdiction of the United States solely for the purpose of evading and avoiding training or service [129] in the Armed Forces of the United States, at which time I was aware that the United States was at war. I was in receipt of induction orders before said departure. My father, my sole living parent, maintained his domicile in the United States and opposed my departure therefrom. My deceased uncle who was at that time a resident of Tijuana, lower California, Mexico, urged me to leave the United States."

(Testimony of Pete G. Cervantes)

Was that true?

The Witness: That is true, your Honor.

Q. By Miss Zacsek: Now, Pete, to the best of your ability have you told the truth with the exception of one or two things which I will point out in the next question, to all the officials of the United States Government to whom you spoke? A. I didn't catch it.

Q. Well, Pete, you said you told the truth but in some places you didn't tell the truth? A. That is right.

Q. Now, one of those things that you said that was not true was to say you were single, is that right?

A. That is right.

Q. And you lied about having a wife and having three children, isn't that right? A. That is right. [130]

Q. Why did you utter that lie, Pete, even under oath? Why did you lie about it?

A. Well, I didn't want the Government to support them.

Q. I can't hear you.

A. While I was in the Armed Forces I could take care of them without an allotment.

Q. Any other reason?

A. Well, I had a better chance of going into the Army single than when I was married.

Q. Was there any other reason at all other than what you have stated that caused you to lie about having a wife and children? Was there any other reason?

A. I want to make the thing right, what I done wrong, that is all.

Q. Well, did you think—

The Court: You mean when you came back?

(Testimony of Pete G. Cervantes)

The Witness: That is right, your Honor.

Q. By Miss Zacsek: Was that the reason you returned to this country?

A. I returned to get into the Armed Forces.

Q. Now, Pete, when you said that you didn't want the Government to support your children, what do you mean by that?

A. Oh, the F.B.I. or the Government will think that I want the Government to support them so I could go into the Army. I didn't want them to think that. She could get along [131] until I come out of the Army.

Q. What do you mean, support—allotment? You mean that which the Government gives to wives and children?

A. That is right.

Q. And you didn't want them to think that?

A. No.

Q. Pete, when was the first time that you heard from anyone about the provisions that were made in the Selective Service regulations about co-belligerent aliens?

A. I didn't hear it.

Q. What? A. I never did.

Q. Well, you learned about it since you have been in the United States, haven't you?

A. That is right.

Q. And from whom did you first hear it?

A. From you.

Q. And that was after you came into this country and surrendered, is that right?

A. That is right.

Q. Now, in this questionnaire, Pete, you have used the word "Mr. Eugene" on several occasions. When you refer to Mr. Eugene who was the person that you referred to? What was his correct name, if you know?

A. Eugene Corteau, Senior. [132]

(Testimony of Pete G. Cervantes)

Q. Have you had the habit in the past of referring to Mr. Corteau as Mr. Eugene or Mr. Gene?

A. Well, he used to—he told me to call him Gene or Mr. Gene.

Q. And when your brother Salvador refers to any person as Mr. Gene in connection with this case as far as you know he refers to Mr. Corteau also?

A. That is right.

Q. When did you first contact Mr. Corteau? That is, when did you first contact Mr. Eugene?

A. April 1945.

Q. And at that time, in April 1945, what if anything did you—what was the purpose if any of your contacting him?

Mr. Haughton: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Miss Zacsek: All right, your Honor.

Now here is what evidently appears to be a typographical error and I would like to clean it up. It is People's Exhibit No. 10 on page 4. It says—the question and answers are as follows:

“Q. What was your purpose in remaining in Mexico for that period of time?

“A. Well, I had no immigration to come across [133] at that time, and I didn't have no papers to come across until I met Mr. James from Local Board 165 at San Ysidro, and he said he was going to help me.”

Now, when you referred to Mr. James I take it it may be conceded that you meant Mr. Gene?

A. Mr. Gene.

(Testimony of Pete G. Cervantes)

Q. And by Mr. Gene you meant Mr. Corteau?

A. No, his name is Jean Corteau. He is the same person we are talking about.

Q. Then this Mr. James is evidently a typographical error.

Mr. Haughton: It might be, counsel. I don't know that it makes any difference, or if it will be any help to you I will stipulate he meant Mr. Gene.

Miss Zacsek: Thank you. I will accept that stipulation.

Q. Now, when you said to Mr. McDonald, I think it was, of the Immigration Board, or Mr. McFadden, when he said, "What was your purpose in remaining in Mexico for that time" and you said, "Well, I had no immigration papers," will you explain to us and clarify for us what you meant when you said that you had no papers to come across until you met Mr. Gene? A. Well—

The Court: I think it is self-explanatory, counsel. [134] He did not have the legal authority to cross the border. That is what he meant. I think that is clearly understandable. Isn't that what you meant?

The Witness: Yes, your Honor.

The Court: You could not get across the border without papers, could you?

The Witness: No, your Honor.

Q. By Miss Zacsek: Well, Pete, why couldn't you get across the border at any time during while the war was on?

A. They refuse a visa every time I used to go to a consul. One time they almost kicked me out.

(Testimony of Pete G. Cervantes)

Q. Well, Pete, there was the back door which you finally took in July of this year. Why didn't you try the back door in 1943 or 1944 or the spring of 1945?

A. Will you repeat that, please?

Q. Yes, I will reframe the question. There is such a thing as slipping across the river or coming through the river bed or coming in the back door and so forth, isn't there, to cross the border?

A. That is right.

Q. Well, during the war and when you were at Tijuana you first contacted Mr. Corteau but why didn't you take that river bed road if you were so determined to get back to the United States?

A. Well, there is a chance to get killed over there on [135] the border.

Q. What do you mean by that?

A. There are a lot of immigration officers, Federal men, all guarding the border there.

Q. What makes you think they would shoot you?

A. They killed a couple of boys over there trying to come across.

Q. Did you know that?

A. Well, it came out in the paper. I wasn't there when they killed them.

Q. Now, this statement that you gave to the F.B.I., Pete, this two sheets, does that contain the whole story as you remember we talked about in my office at the time those gentlemen were there with you?

A. Yes.

The Court: You will have to speak up. Nobody can hear you. What was your answer?

The Witness: Yes, it was.

Q. By Miss Zacsek: What?

A. Yes, it was.

(Testimony of Pete G. Cervantes)

Q. What I am trying to say, Pete, was anything else said on this subject by yourself and the gentlemen of the F.B.I. while you were in my office with Salvador that does not appear here?

A. Well, my uncle's story. [136]

Q. All right, your uncle's story which was told them does not appear here, is that right?

A. I don't think so.

Q. What? A. I don't think so.

Q. All right. This is not your handwriting, is it?

A. No.

Q. In other words, what happened was this: You talked with the F.B.I. gentlemen—

The Court: Just a moment. Do not be too leading in your questions. He is your witness.

Miss Zacsek: All right, thank you.

Q. You remember in substance, do you not, the conversation in my office with these gentlemen when they came to my office in response to a call? A. I do.

Q. Now, when you were with them alone did you go over the same ground again with the same people?

A. No, another man.

Q. Did you cover the same ground then with the other gentlemen that you covered in my office? A. No.

Q. What? A. No.

Q. I don't understand you. [137]

A. Well, I mean—

Q. Pete, there was—I am trying to direct your attention to the first conversation in my office. Now, that conversation was along lengthy and detailed conversation, is that right? A. That is right.

(Testimony of Pete G. Cervantes)

Q. Now, when you were in the office of the gentlemen of the F.B.I., with Mr. Kachelhoffer, did you have with him in substance the same conversation that you had with the gentlemen in my presence? A. I did.

Q. Now, as far as you know did they leave anything out when they made out this paper that you talked about, or do you even know what is in this paper, Pete? Do you want to look at it? You had better read this first before you try to answer.

The Court: Proceed, counsel.

Miss Zacek: All right.

Q. Now, Pete, does this contain the whole story?

A. Well, it doesn't say there that I want to come when the shooting was on.

Q. Then it does not contain the whole story, is that right? A. That is right.

Q. It is only true in part? [138]

A. That is right.

Q. What is here is reasonably true and what isn't here has been left out? A. Yes.

Q. Now, what I am getting at is this, Pete: Did you tell the Government F.B.I. agents anything about yourself that is not put down here?

A. Well, I told them that I was single but they look at the record and find out I was married.

Q. I mean outside of that. You just now got through saying, "while the shooting was going on." Will you tell us what you said to them in this conversation that they did not put down on this paper?

A. Well, I guess they didn't ask me if I want to come when the shooting was on. I told them I was when the

(Testimony of Pete G. Cervantes)

shooting was on but they didn't write it down to the paper.

Q. Pete, your mumbling—you are incoherent. I know what you are trying to say, but it doesn't make sense to me even now.

The Court: Read the answer.

(Answer read.)

Q. By Miss Zacsek: You told them you wanted to come back while the shooting was on?

A. That is right.

Q. And they did not put that down here? [139]

A. No.

Q. All right. You mentioned before something about the uncle before you read this. Did you have a talk with them about the uncle? A. I did.

Q. And that was not put down on this paper?

A. That is right.

Q. What did you tell them about that, that they didn't put down? A. That is right.

Q. What did you tell them?

A. I told them my uncle came for us and took us over there to Mexico.

Q. All right. Is that all you told them?

A. I told them that I want to come here and join the United States Army. That is my main reason for being over here.

Q. All right. Now, in relation to this statement you knew that you by law were protected so that you didn't have to talk to them or anybody else or tell any of the F.B.I. officers anything, isn't that true?

A. That is right.

(Testimony of Pete G. Cervantes)

Q. You were also told that if you wanted to talk to them and tell them the truth in its entirety that you were free to do so? [140] A. That is right.

Q. And you elected to talk to them freely?

A. That is right.

Q. Now, the statement was made in the other questionnaire at the Department of Immigration and Naturalization and the reference was made to your arrest and you quote yourself or you referred to yourself as saying, "When I was arrested". All right, you were arrested. Now will you explain the circumstances of your arrest?

The Court: What materiality is that? I assume it refers to the same arrest he is under trial for now, does it not?

Miss Zacsek: No. It refers to the method—it does, yes, but it refers to the method of the arrest of which there is some testimony in the record now and I would like to complete it.

The Court: The method of arrest is immaterial.

Miss Zacsek: All right. Then I will say, where were you taken into custody?

A. Well, we were down at your office and you called up the F.B.I. man.

Q. And they came in?

A. They came in and took us to the County Jail.

Q. And you went with them? A. That is right.

Miss Zacsek: May I respectfully inquire when the court [141] adjourns?

The Court: I was wondering if you could complete your direct examination. Are you nearly through?

Miss Zacsek: Well, yes, nearly through. There are one or two questions that I still have.

The Court: The only thing is if I give you over night you will have more than one or two.

Miss Zacsek: That is quite true, your Honor.

The Court: Well, it is 4:30 and the jury has had a pretty long day. We will take a recess at this time until ten o'clock tomorrow morning. The jury will bear in mind the admonition the court has heretofore given. You must not discuss this case among yourselves, or permit any person to discuss it with you or express or form any opinion until the case has been finally submitted to you.

With that we will take a recess until ten o'clock tomorrow morning, and I desire to see counsel in chambers.

(Whereupon, at 4:30 o'clock p.m., a recess was had until 10:00 o'clock a.m., Thursday, October 31, 1946.) [142]

Los Angeles, California, Thursday, October 31, 1946
10:00 a.m.

(Case called by the clerk.)

The Court: Will you stipulate the jurors are all present and in the jury box and the defendants are present in court with their counsel?

Miss Zacsek: So stipulated, your Honor.

Mr. Haughton: Yes, your Honor.

The Court: You may proceed.

Miss Zacsek: Pete, will you take the stand?

PETE G. CERVANTES,

called as a witness by and on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Resumed)

By Miss Zacsek:

Q. Now, Pete, I am going to direct your attention to the conversations you had with Jean Croteau and ask you what if anything he said relative to your delinquency?

Mr. Haughton: Objected to as incompetent, irrelevant and immaterial.

The Court: Read the question.

(Question read.)

The Court: Objection sustained.

Miss Zacsek: May it please the court, may counsel [146] approach the bench?

The Court: I do not think there is any occasion to approach the bench.

Miss Zacsek: Well, I don't like to urge an offer of proof in front of the jury and there was something in the regulations which I had ascertained only this morning, and I am having, as I indicated to the court—

The Court: But, counsel, I take the position, and if I am in error the Circuit Court will correct me, that any question of his delinquency is a matter for the court to pass upon if there is a conviction and in the event of pronouncing judgment. That is a matter that would be in mitigation. The offense is completed under Count 1 when the defendant failed to report for induction and under the second count when he left the United States, if he did leave the United States and if they left for the

(Testimony of Pete G. Cervantes)

purpose of evading service in the military forces of the United States the offense was complete and anything they did in the way of trying to rectify any error, if they did commit an error, would be simply a matter in mitigation which matter is not before the jury.

Miss Zacsek: May it please the court, if I may call the court's—I haven't the law with me. It is in the stenographic department in this building. As I said, I am having it typed up by way of an instruction, but I ascertained this [147] morning in the regulations, the law says it is the duty of a delinquent to report from day to day regardless of the circumstances or why or how the registrant failed to report for induction. Nevertheless it is the duty to continue and that duty is imposed by law from day to day.

The Court: He is not charged with that in this case. If he was charged with failing to perform a duty in that he failed to do that, that would be material, but it is not included in any of the charges in this indictment.

Miss Zacsek: Well, I beg the court's pardon. I have been of the understanding that Count 1 is the failure to report for induction knowingly. If that be true then this law which I propose to submit to the court as soon as I can have it accomplished is important.

The Court: Well, the court has ruled.

Miss Zacsek: Thank you. Then that is all, thank you. You may take the witness, Mr. Haughton.

Cross Examination

By Mr. Haughton:

Q. Mr. Cervantes, did you ever at any time make any request of your Local Board 199, for permission to serve in the Armed Forces of Mexico?

A. Well, they never did ask me.

(Testimony of Pete G. Cervantes)

The Court: Did you make such request?

The Witness: No, I did not. [148]

Q. By Mr. Haughton: Did you ever serve in the Armed Forces of Mexico? A. No, I never did.

Mr. Haughton: That is all.

Redirect Examination

By Miss Zacsek:

Q. Did you know that you had the right as a matter of fact to ask to be transferred to the Army of your own land?

Mr. Haughton: Objected to as incompetent, irrelevant and immaterial.

The Court: I will let him answer the question.

A. No.

Q. By Miss Zacsek: When you volunteered into the Army were you accepted into the Armed Forces of Mexico? A. Yes.

Mr. Haughton: Just a moment. May I ask that the question be stricken for the purpose of making an objection?

The Court: Well, it has been asked and answered. I cannot strike it out.

Mr. Haughton: Very well, sir.

Q. By Miss Zacsek: All right. Did you under the enlistment which you—strike that, please.

Will you please explain to us what your position was in the Mexican Army and the Army itself in relation to this war? [149]

Mr. Haughton: Objected to. That is calling for a conclusion of the witness and is incompetent, irrelevant and immaterial.

(Testimony of Pete G. Cervantes)

The Court: Objection sustained.

Q. By Miss Zacsek: In other words, then, just to clarify it, you have testified that you volunteered and were admitted into the Mexican Army, is that right?

A. That is right.

Q. But you did not actually serve in the war, is that right?

A. That is right.

The Court: You did not serve in the Mexican Army, did you?

The Witness: No.

The Court: All you did was register with them, isn't that right?

The Witness: Well, I volunteered in the Mexican Army.

The Court: You registered similarly as you did here?

The Witness: I volunteered.

Q. By Miss Zacsek: Is there a distinction in Mexico between volunteering and being registered and drafted?

Mr. Haughton: Object to that as calling for a conclusion on the part of the witness and being a matter of law.

The Court: Objection sustained, on the ground it calls for a conclusion of the witness. [150]

Q. By Miss Zacsek: As far as you knew did you have a personal choice of registering or a personal choice of volunteering into the Army?

Mr. Haughton: Object to that.

The Court: Objection sustained on the same ground. The court will direct the witness not to answer the question.

(Testimony of Pete G. Ceryantes)

Q. By Miss Zacsek: What was your position as far as you knew after you had volunteered for service in the Mexican Army?

Mr. Haughton: Object to that as calling for a conclusion of the witness.

The Court: Objection sustained.

Q. By Miss Zacsek: When you left Guadalajara for Tijuana, did you do anything about your Army status at that time?

Mr. Haughton: Object to that as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Miss Zacsek: No further questions.

The Court: You stated that you received your notice to report for induction here in the latter part of October 1942?

The Witness: That is right, your Honor.

The Court: And you received a notice to report on November 9th, didn't you? [151]

The Witness: That is right, your Honor.

The Court: And you immediately quit your job?

The Witness: No, I was really going into the Army, your Honor.

The Court: But you quit your job here?

The Witness: Yes.

The Court: And you crossed the border on Hallowe'en Day, I believe you said. You went back to Mexico on Hallowe'en Day?

The Witness: That is right, your Honor.

(Testimony of Pete G. Cervantes)

The Court: And when you did that you knew that and your purpose for doing it, was to not comply with the order to report for induction?

Miss Zacsek: That question is objected to, may it please the court, and I object to it being propounded to this witness on the ground it calls for an opinion and conclusion.

The Court: The objection will be overruled.

The Witness: Well, I got up there and I registered right away with the Mexican Army.

The Court: You registered in December, didn't you?

The Witness: December? Yes, your Honor.

The Court: But when you left the United States, if I remember correctly your testimony, you said you were not feeling well, you were sick and you were in debt? [152]

The Witness: That is right.

The Court: And you wanted an extension?

The Witness: That is right.

The Court: And when they wouldn't give you an extension you went to Mexico?

The Witness: That is right, your Honor.

The Court: That is all.

Miss Zacsek: That is all.

Mr. Haughton: No questions.

Miss Zacsek: Salvador Cervantes, will you take the stand?

SALVADOR G. CERVANTES,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Salvador G. Cervantes.

Direct Examination

Miss Zacsek: With the court's permission I will ask the preliminary foundation questions by way of leading questions in order to expedite matters, if that is agreeable with the court.

Q. By Miss Zacsek: Salvador, I take it you came into this country with your family when you were about one year old, is that right? A. Yes. [153]

Q. And you and your family came to Los Angeles at that time and you stayed here continually all those years, is that correct? A. Yes.

Q. And I take it further as far as you know you were born in La Barca, in Jalisco in the Republic of Mexico, is that right? A. Yes.

Q. And also as far as you know and can recall you were brought here, your father and your sister and your brother, by and with your uncle who was your father's brother, is that right? A. Yes.

Q. And as far as you know your father was at all times a Mexican National or citizen? A. Yes.

Q. And to your best knowledge he was never a citizen of the United States? A. No.

Q. Now, Salvador, during your lifetime as you grew up what was your mental relation to your brother Pete?

(Testimony of Salvador G. Cervantes)

Mr. Haughton: Object to that as incompetent, irrelevant and immaterial.

Miss Zacsek: It goes to his intent.

The Court: I am going to overrule the objection. If [154] he has an explanation for his conduct I want to hear it. I want him to have a full opportunity to explain it.

Q. By Miss Zacsek: Did you understand the question, Salvador? A. Yes.

Q. Will you answer it, please?

A. Well, being my older brother I used to do what he used to tell me all the time, and every time he used to go somewhere I went.

Q. A little louder.

A. Well, he is the older brother and I had to respect him because he was my older brother and I had to do what he told me to do.

Q. Well, did you do what he told you to do?

A. Yes.

Q. All your life? A. Yes.

Q. Did you ever have during your lifetime any feeling other than dependency upon your brother's orders?

A. (No answer.)

Q. Do you understand that question?

A. No, I don't.

Q. All right. This is going to be a little difficult, too. I don't want to lead unnecessarily, your Honor. [155]

The Court: Well, don't make an explanation; ask your questions.

(Testimony of Salvador G. Cervantes)

Q. By Miss Zacsek: Did you through your lifetime, Salvador, develop a habit of being dependent upon Pete?

A. Yes.

Q. Did you ever do very much in your lifetime on your own account of anything that was ever important without consulting Pete?

A. No, everything I used to do I used to consult my brother about it and see what he told me.

Q. Now, in your family and as you were brought up, Salvador, how did you act toward your uncle?

Mr. Haughton: Object to that as immaterial—incompetent, immaterial, and irrelevant.

The Court: Let him answer the question.

A. Well, my uncle was—he used to be—he used to be the head of my family even over my father. He was the one that directed my family.

Q. By Miss Zacsek: Louder.

A. My uncle was the head of the family over my father so he used to tell what to do.

Q. Even told your father what to do? A. Yes.

Q. Did your father mind him the way you minded Pete? A. No. [156]

Q. Do you understand that question, Salvador?

A. No, I don't.

Q. When I say "mind" I mean obey. In other words, if your uncle told your father to do something did your father do it? A. Yes, sir.

Q. The way you would do whatever Pete told you?

A. Yes.

Q. Well, is that a custom in your family, that the older brothers tell everybody else what to do?

A. Yes.

(Testimony of Salvador G. Cervantes)

Q. All right. Now, Salvador, how old were you when you registered for the draft?

A. I was, I think, 19 then.

Q. Now, Salvador, I am going to show you People's Exhibit No. 2, which is the Selective Service questionnaire dated October 26th, 1942, and ask you whether this is your signature? A. Yes.

Q. When and where did you fill out this questionnaire and put your signature on this document? Do you remember that?

A. Well, I don't remember the date or anything about it. I know that is my signature. I don't know who filled it out for me. [157]

Q. Well, do you remember where it was filled out, Salvador? A. I think it was up on Boyle Street.

The Court: At the Selective Service Board?

The Witness: No, it wasn't. It was—I think it was one of the men that fill out papers.

Q. By Miss Zacsek: Do you know if it was the Advisory Board or some member of the Advisory Board?

A. No; it was nobody of the Board.

Q. Do you know if it was a notary public?

A. I think that is what it was.

Q. But you are not sure? A. I am not sure.

Q. Now, you notice that all of the questions that had to be filled out and were filled out were done in type writing. Will you explain to us why or how it happened that this is in typewriting? Did you type it up?

A. No, I didn't.

Q. Can you type? A. No, I can't.

(Testimony of Salvador G. Cervantes)

Q. All right. And how did it happen that that is typewritten?

A. Unless that man filled it out but I don't know what was in it.

Q. The man filled it out? [158] A. Yes.

Q. He asked you questions and you answered them, is that right? A. That is right.

Q. And then he typed it down? A. Yes.

Q. Now, Salvador, I notice here where it says "Citizenship", No. 4, there is a check on there in red pencil and red pencil or red crayon is used to write the words "am not." In other words, the printing is, "I..... a citizen of the United States," and in red it says, "I am not a citizen." There is a red check in front of that. That is the only handwriting on this instrument other than the ink writing with the number of your alien registration. Now, do you remember anything at all, Salvador, as to how the red crayon words "am not" got into that record?

A. I didn't put nothing down, not even the red pencil.

Q. You didn't put that down? A. No, I didn't.

Q. Did you fill out that ink number of your alien registration? A. No, I didn't.

Q. Did you look at that paper and read it carefully before you signed it, Salvador? A. I didn't. [159]

Q. Do you now know whether or not the red ink or red crayon writing and the ink writing was on that paper before you signed it and swore to it?

A. Well, I didn't look at the paper when I signed it.

Q. So you have no knowledge of anything?

A. No.

(Testimony of Salvador G. Cervantes)

Q. Well, did you look at it afterwards, after you signed it?

A. No, because the man got it and put it inside of an envelope and mailed it. That is all he told me. That was all.

Q. All right, at the time that you were asked the questions I take it that whoever this man was he asked you where you were born, is that right? A. Yes.

Q. And did you answer La Barca, Jalisco, Mexico?

A. Yes.

Q. And he asked you when you were born?

A. Yes.

Q. And you told him and he put that down. You were born December 11, 1922, is that right? A. Yes.

Q. And did he ask you whether or not you were a citizen of the United States? Do you remember that?

A. Yes, he did. [160]

Q. And did you tell him you were or you were not?

A. That I was not.

Q. And did you tell him that you were a citizen or a subject of Mexico? A. Yes.

Q. Did you give him your alien registration number?

A. Yes.

Q. Did you tell him you did not file a declaration of intention to become a citizen?

A. Yes, I told him that.

Q. Now, after you left this man and he put the paper in an envelope as you have told us, that was as far as you did anything about registering at that time, is that right?

A. That is right.

(Testimony of Salvador G. Cervantes)

Q. Now, there are two exhibits here, your registration card, and I show you here People's Exhibit No. 1, which is a registration card bearing your name on it and bearing a signature. Is that your signature? A. Yes.

Q. When and where did you first see this?

A. Well, the first time I seen it was here in court.

Q. But that is your signature, Salvador?

A. Yes, that is my signature.

Q. Did you sign it in court?

A. No; I went down to the Roosevelt Building High [161] School. There is where I filled it out.

Q. Then you saw it before? A. Yes.

Q. And who told you to go to the Roosevelt High School to fill it out, Salvador?

A. Well, it came out in the papers that all of a certain age had to register by a certain time.

Q. And you went down? A. And registered.

Q. And signed that? A. Yes.

Q. Now, as far as those two matters are concerned, your registration and filling out the questionnaire, did you have any other words from the Government, word from the Selective Service Board that you know of before you went away? A. No, that is all I received.

Q. Now, Salvador, this uncle of yours that has been testified to, left your home around 1932 and then he came back and visited you from time to time, is that right?

A. Yes.

Q. And toward the end—before you and Pete left it is in the record that he had been or he came to your home from time to time and argued or urged Pete to go away. Now, were you present at any of those arguments or conversations? [162] A. No.

(Testimony of Salvador G. Cervantes)

Q. You don't know or you didn't hear then what your uncle said to Pete or what he replied? A. No.

Q. Did anybody in your family talk to you about what the uncle told Pete? A. No, they didn't.

Q. Well, then, will you please tell us in your own words how it happened that you went with Pete?

A. Well, Pete had received some papers and then my uncle at that time came over and said that we had to go to Mexico, so my brother, he was sick at that time, he had a wreck and knocked all his teeth down and everything and was very nervous. He had a lot of headache, too. My uncle told him, "You don't feel good," so he went with my uncle and I went along with my brother. I didn't know I was doing anything because I only registered and received no papers at all.

Q. Well, at the time that you went did you have in your mind, did you think, Salvador, that you were violating some rule or law? A. No, I didn't.

Q. At that time when you left did you have any conversation yourself with the uncle?

A. No, I didn't. They didn't talk to me. [163]

Q. Didn't talk to you?

A. My uncle used to talk to my brother, that is all.

Q. Well, did Pete tell you anything before you left?

A. No, he didn't tell me anything.

Q. You just tagged along? A. Yes.

Q. What did you tag along for, Salvador? Why? Can you tell us now what made you go with Pete and your uncle?

A. I don't know. It is all the time my brother used to go somewhere. We used to go together. Everywhere

(Testimony of Salvador G. Cervantes)

we used to go together, so I just used to follow my brother where we used to go.

Q. All right. Now, did you receive any notice of classification on October 8, 1943? A. No, I didn't.

Q. Did you ever receive any order of induction at all?

A. No, I didn't receive no papers at all.

Q. Now, when you went to Mexico with Pete did you know that you were unlawfully evading the law of the United States and the provisions of the Selective Service Act? Do you understand that question? A. Yes.

Q. All right. A. No, I didn't.

Q. Did you leave for Mexico knowing that by going [164] across you did it for the purpose of evading service in this country?

A. I didn't because I only had this paper and I didn't know anything about the rest.

Q. All right. Now, you said something a moment ago about reading in the papers about what you were supposed to do. Is that right? A. Yes.

Q. Did you have any thought in your head then, any idea from reading the papers, the age that the Army was calling men—

A. Well, some friend of mine used to say only the 21-year-old boys were going in the Army.

Q. Did you believe that? A. Yes, I did.

Q. All right. Did you have any idea what was, if anything, going to happen after you went from home with your uncle? Did anybody tell you anything? I mean, did you yourself have any idea, Salvador, what you were doing or where you were going or what was going to happen? A. No, I don't.

(Testimony of Salvador G. Cervantes)

Q. You just tagged along, is that right?

A. Yes.

Q. I take it that you went with him, your uncle, in a car and you went through the line in Tijuana? [165]

A. Yes.

Q. Did you say anything to anybody when you crossed the line, to any American official?

A. No, I didn't.

Q. Did you say anything to any Mexican official at the border? A. No.

Q. All right. Now, after you got—was that the first time you had ever been in Tijuana? A. Yes.

Q. Were you present when Pete said, as he told us here from the stand, that he didn't like Mexico and he wanted to go home?

A. Well, he told me that, that he wanted to come back.

Q. I know, but, Salvador, I did not ask you what he told you. Listen just carefully to the question, please. The question is this, Salvador—did you—were you present when Pete and your uncle had a talk in which Pete said, "I don't like it here; I want to go home" or words to that effect? A. No, I wasn't.

Q. Did Pete tell you anything about wanting to go home? A. Yes, he did.

Q. Where was that, Salvador? [166]

A. That was in Tijuana.

Q. How long had you been in Mexico then?

A. I don't know.

Q. Well, were you there a day or a week or a month before he said that? Have you any remembrance?

A. I don't know how much time we stayed there.

(Testimony of Salvador G. Cervantes)

Q. Well, do you remember where he told you that?

A. No, I don't.

Q. Well, when he said he didn't like it what else did he say if he said anything?

A. Well, he said that he had told my uncle that he was coming back so my uncle told him he couldn't come back any more. He said he had no papers to come across or anything to get across with.

Q. Well, after you got to Mexico how did you feel about it?

A. Well, I was just with my brother. What he did I used to do. That is all.

Q. Well, did you have any feeling about Mexico one way or the other? A. No, I didn't.

Q. All right. When Pete told you this what, if anything, did you say? Did you say anything?

A. No, I didn't.

Q. All right, were you present at any time while you [167] were in Tijuana at any conversation Pete had with the uncle? A. No, I didn't.

Q. Well, then, I take it you went to Guadalajara?

A. Yes.

Q. With the uncle and Pete? A. Yes.

Q. Do you remember anything about the date when you got to Guadalajara?

A. Well, I know it was in December because when we volunteered they put the date on it.

Q. That is how you remember it? A. Yes.

Q. Now, did you have any talk with the uncle or with Pete or either one of them alone or together about going into the Mexican Army?

(Testimony of Salvador G. Cervantes)

A. Well, my brother told me that we had to volunteer in the Mexican Army because they were fighting for the same cause that the United States was, and that it would be the same thing if we got in the Mexican Army and waited for orders there.

Q. When did Pete tell you that?

A. The day before we volunteered in the Mexican Army.

Q. And did you believe him?

A. He told me, so I believed him.

Q. And did you volunteer? [168]

A. Yes, we did.

Q. Because he told you that it was the same thing as here?

A. Yes.

Q. All right. Well, after you volunteered were you accepted?

A. We were.

Q. Did the Army then put you to work in the Army or did they tell you to wait?

A. They told us to wait for further orders, that is all.

Q. For further orders? A. Yes.

Q. I take it from the record that you know—heard that your uncle died shortly after you got to Guadalajara? Is that right?

A. Yes.

Q. Do you remember how long after you volunteered into the Army that your uncle died?

A. No, I don't.

Q. Can you think at all, Salvador, whether it was weeks or months?

A. I am not sure whether it was weeks or months. I don't know the date.

Q. Do you remember when he died, Salvador? [169]

A. No, I don't.

(Testimony of Salvador G. Cervantes)

Q. After he died did you have a talk with Pete about what to do next?

A. Pete told me he was—he is the one who did all the talking.

Q. Well, what did Pete say to you?

A. Well, he told me that there was no action over there and the best thing we can do is come back to Tijuana and try to cross the border and get in the American Army.

Q. What do you mean by “no action over there”?

A. Well, because the United States wouldn't need the Mexcan people to go fight with them.

Q. There was no action in Mexico? A. Yes.

Q. All right, what did you say to Pete, if anything?

A. I didn't say anything to him.

Q. Don't you ever reply to Pete when he talks to you?

A. No.

Q. All right, Salvador. Then after Pete told you he was going to try to get into the American Army through Tijuana what was the next thing that happened to you two boys? What did you do? What happened then?

A. Well, my brother was the one—

Q. A little louder, please. Try to speak louder, Salvador. I am having an awful time hearing you. [170]

A. My brother did all the talking. He was getting information for all things, from all different kinds of people to find a way to come across.

Q. You did not accompany him? A. No.

Q. Well, when he would come home what did he say about what he had tried to do?

A. Well, he used to say that the people say that being a Mexican if you come over here the only thing they can

(Testimony of Salvador G. Cervantes)

do is put you in jail and throw you back over there. That is the only thing they can do and told him to forget about it.

Q. All right. You went with Pete to Tijuana. You went back to Tijuana with Pete, is that right?

A. Yes.

Q. All right. Now, when you were in Tijuana did you go with Pete anywhere, to any offices, of any notaries or lawyers or counsellors or anyone—immigration?

A. Well, I used to go with him but he is the one that does all the talking there. I used to stay outside.

Q. You didn't go inside with him? A. No.

Q. You know the offices where Pete went?

A. Well, he went to some notary publics and to the American Consul.

Q. When he would come out of those offices did he talk [171] to you about what happened inside?

A. Well, yes. They used to tell him they couldn't do anything about it. The only thing they can do if he came across was put him in jail. That is all.

Q. Did Pete say why he went to the different offices and to the consul?

A. He wanted to get some information about crossing the border and getting into the American Army.

Q. After Pete found out he couldn't get across what did you boys do then?

A. Well, after my brother tried a lot of times to get across—

Q. Look, Salvador, do you want these gentlemen to hear what you are saying? A. Yes.

Q. Are you interested in having somebody hear what you have to say about this trial? A. Yes.

(Testimony of Salvador G. Cervantes)

Q. Well, if you don't talk up nobody is going to hear you, Salvador. I can't go on struggling with you any more. Please shout. Can you shout? You are a big boy. Shout, **really**.

A. Well, my brother after talking to all those people in there and telling them—telling him they couldn't do anything about it; the only thing they could tell him to [172] do was to go in business on his own and forget about the United States, so my brother got some kind of business started working there and then he told me to go to work so I started working there.

Q. All right. Now, around the spring, April of last year, Jean Corteau came into the life of Pete, is that right?

A. Yes.

Q. Do you know anything about how Pete and Jean got together?

A. I think some friends went up to Jean's house and told him about Pete and Mr. Jean went up to Tijuana and talked to my brother about it.

Q. Were you present when Mr. Jean talked to Pete?

A. No, I wasn't.

Q. Were you present at any of the conversations which Pete had with Jean?

A. No, I wasn't.

Q. Well, Salvador, tell us in your own words why it is and how it happened that whatever was done about Pete getting back or going into the Army or anything else, that you never were present and only heard about it after Pete got through talking?

A. Well, my brother was the one that was doing all the informing and talking to Mr. Eugene and Mr. Eugene would [173] fix some kind of papers together for us to go

(Testimony of Salvador G. Cervantes)

in the American Army, so I was always just waiting for my brother. I knew if Eugene can fix my brother I go with him. It would be the same thing.

Q. Were you around Pete when he wrote any of the letters that he sent up to his Board?

A. No, I wasn't.

Q. Were you around when he received any letters from Mr. Eugene? A. No, I wasn't.

Q. Did Pete talk to you from time to time about what was happening between Gene and himself, about the Army?

A. No, he just told me some letters he had received, that he sent, that is all.

Q. All right. Now, Salvador, you finally went into the American Consulate in July with Pete and myself, is that right? A. Yes, sir.

Q. And before then you say Pete had gone there a few times to try and get papers and they wouldn't do anything, is that right? A. That is right.

Q. Then you were told, "Well, no matter what happens at least you had better get a paper to show that you had tried to come back," is that right? [174]

A. Yes.

Q. So you went in and saw Mr. Witte?

A. That is right.

Q. That is after I talked to Mr. Witte?

A. That is right.

Q. You don't know what I told Mr. Witte?

A. No.

Q. Then you went in and made out some papers?

A. That is right.

(Testimony of Salvador G. Cervantes)

Q. And you signed them? A. Yes, sir.

Q. And Mr. Witte gave you a paper which said you could not come in no matter what?

A. That is right.

Q. You were told in substance that if you came back to this country you would have to surrender yourself and stand trial, is that right? A. Yes.

Q. And you were also told that maybe the Army might take you and maybe they wouldn't, is that right?

A. Yes.

Q. That the only way you could find out even at this late date was to come back and find out?

A. That is right.

Q. But if you came back you were strictly on your own, [175] is that right? A. Yes.

Q. And you had to surrender the moment you came back to this country? A. Yes.

Q. Well, I take it you and Pete both came through the back door so to speak, of the border, is that right?

A. Yes.

Q. And you came to my office and I telephoned the F.B.I. and they came up and you talked to them?

A. Yes.

Q. And they wrote out something and you signed it?

A. Yes.

Q. Then you went to the Department of Immigration and you had a talk with the gentlemen there?

A. Yes, sir.

Q. And they took down what you said?

A. Yes.

(Testimony of Salvador G. Cervantes)

Q. And when you talked there, Salvador, you kept telling them about your brother Pete and then you said the only reason you went was to avoid going into the Army and you said one thing one time and one thing another time. Why did you say so many things that were contradictory?

A. I couldn't understand most of the questions he used. He used some big words. I didn't know what it was, so the [176] first thing that came to my head that is what I used to answer.

Q. Well, Salvodar, you have talked to me as your lawyer a lot of times since then, haven't you? Since you have been here and in jail and since this matter has come up?

A. Yes.

Q. And you had it explained to you what this is all about and what you are charged with?

A. Yes.

Q. Now, I am going to ask you point-blank, Salvador, and you have had a great deal of time to think and try to remember, is that right?

A. Yes, sir.

Q. Now, Salvador, once more I am going to advise you that you are charged in the first count that in 1943 you failed to report for induction into the Armed Services, and that you did that wilfully and knowingly; that you had been ordered and notified to report and you didn't do it. Now, did you know you were supposed to?

A. Well, I didn't know. I didn't receive no papers at all. How could I report?

The Court: When you left here did you let your father know where you were going?

The Witness: No. At the time we left we didn't know [177] where we were going.

(Testimony of Salvador G. Cervantes)

The Court: Did you write to him?

The Witness: No, I did not.

The Court: You did not leave any address?

The Witness: Well, the only address was where we were still living, at the same address.

The Court: Where your father was living?

The Witness: Yes, sir.

The Court: So any mail that was sent to you at that address he did not send on to you?

The Witness: Well, at the time he didn't know where we were at, so I didn't leave no address because it was the same address. I didn't know nothing about that.

Q. By Miss Zacsek: After you got back to Tijuana, that was in the beginning of 1943, was it not?

A. Yes.

Q. Well, after that you told your family where you were, didn't you? A. Yes.

Q. And they knew where you were? A. Yes.

Q. And they came to see you, didn't they?

A. Yes.

Q. All right. Did anybody after you settled then and got your job in Tijuana and after you were in communication [178] with your family, did anybody tell you about your order?

A. No. The only thing they told me about was that classification. That is all the papers that I received.

Q. The classification? A. Yes.

Q. Do you know what that was?

A. Well, I don't know—it was 1-A—I didn't know what it was.

(Testimony of Salvador G. Cervantes)

Q. Now, at any time from the beginning of 1943, because your uncle died in the beginning of the year, didn't he, soon after you were in the Army?

A. Yes.

Q. Of Mexico? A. Yes.

The Court: Just a moment, counsel. He never testified he was in the Army. That is a misleading question.

Miss Zacsek: That is just it. I don't know how to bring it in front of this court except through these—

The Court: The only thing is you are making a statement that the witness has not testified to and you are assuming something that is not in evidence.

Miss Zacsek: I am sorry. I will withdraw the question and reframe it.

Q. Salvador, after you volunteered for the Army you said that Pete said you were not getting any action and you [179] wanted to come home?

A. That is right.

Q. That was in December when you volunteered?

A. Yes.

Q. And the Army just told you to wait for further orders? They did not take you then? A. Yes.

Q. And they gave you this paper? A. Yes.

Q. Do you remember then that Christmas came along, is that right? A. Yes.

Q. Do you remember how soon after that Christmas that your uncle died? Have you any recollection of that, Salvador? A. No, I don't.

Q. The next year, that is 1943, when the spring came along do you remember if you were in Tijuana then, in the spring of '43? A. I think we were.

(Testimony of Salvador G. Cervantes)

Q. Now, when you first came to Tijuana that spring after your uncle died, was it at that time that Pete was going around as you have told us, trying to—

Mr. Haughton: Object to this, if the court please, on the ground it is leading and suggestive. [180]

Miss Zacsek: That is right. I will withdraw the question and reframe it.

Q. Salvador, you have told us when you came to Tijuana sometime that Pete went around to these different places and you would go and stand outside. You would go with him and wait outside until he came out again?

A. That is right.

Q. Because he was asking how he could get across the border? A. That is right.

Q. Do you remember when it was that he did that, Salvador?

A. Well, that was around, by the time we came back from the interior.

Q. When you say the "interior" you mean Guadalajara? A. Yes.

Q. That is when you first came back to Tijuana?

A. That is right.

Q. Now, Salvador, you were asked, or, I will withdraw that. Please strike it.

It says here in this indictment, Salvador, that you were charged with, which I have told you before, and you are charged here in Count 2 that when you left here, Los Angeles, on October 30th in 1942, you left it knowingly and unlawfully; that you departed from the United States

(Testimony of Salvador G. Cervantes)

to go [181] to Mexico for the purpose of evading service in the U. S. Armed Services, is that true? A. Yes.

Q. Did you leave here to avoid going into the Army?

A. No, I didn't, but by the time we came back I knew I done wrong because they had told me that.

Q. Yes, I know, you know that now. That is true now, isn't it? A. Yes.

Q. But, look, Salvador, I have to ask you to forget what I have told you and what everybody else told you, the F.B.I. and so forth. I want you to try and go back in your mind to the day that you and your uncle and Pete left the country. Can you go back there mentally?

A. I will try.

Q. Now try and think about the time, Salvador, that you went away that day. Can you remember that?

A. (No answer.)

The Court: You remember the day you went to Tijuana with your uncle and brother and crossed the border into Mexico?

The Witness: I think it was on Hallowe'en Day.

The Court: You remember the occasion?

The Witness: Yes.

Q. By Miss Zacsek: Now, when you went on that day, not [182] now what people have told you, but on that day when you went with Pete, did you do it because you didn't want to go into the Army? Did you do it to get away from going into the Armed Services?

A. No, I didn't. I didn't do it to get away from the Armed Services.

(Testimony of Salvador G. Cervantes)

Q. Well, why did you do it—

A. Well, I just went with my brother. I didn't know I was doing anything wrong.

Q. Since that day, and particularly since I have talked to you, you have been told that that was a crime; that it was wrong and because you went you are guilty of a crime, is that right? A. Yes.

Q. Do you remember, Salvador, that I told you that the crime depended on what was in your mind?

Do you recall that, Salvador? A. Yes.

Q. Do you remember that I told you that it is the intention you had, what you had in your head, the purpose of why you went that made the difference between right and wrong? Do you remember I told you that?

A. Yes.

Q. Now, do you now think that when you went there that you thought you did something wrong then?

A. No, I didn't. [183]

Q. Pete has told you and he told us here that his idea was to come back to the United States right away, as fast as he could and get some action, get into the Army. How did you feel about that? Did you want to do it, too, or did you just want to tag after Pete because he wanted to go? A. I wanted to go in there with my brother.

Q. Wanted to go into the Army with your brother, too? A. Yes.

Q. Is that the reason you came back to the United States? A. Yes.

Miss Zacsek: Thank you, your Honor.

Mr. Haughton, your witness.

(Testimony of Salvador G. Cervantes)

Cross Examination

By Mr. Haughton:

Q. Did you go to school in the United States here, Salvador? A. Yes, sir, I did.

Q. What school did you go to?

A. To the Utica Street Hollenbeck High School.

Q. How long did you go to High School?

A. I went up to the A-11.

Q. Now, when you left with your brother to go to Mexico on Hallowe'en Day, did your brother tell you why he was going? [184] A. No, he didn't.

Q. What? A. He didn't tell me at that time.

Q. Did he tell you that he had been ordered to report for induction?

A. No. He said—He said he only received some papers.

Q. Well, you testified a little bit ago that you knew he had been ordered to report for induction. How did you know that? A. That was afterward.

Q. When you left you did not know that he was supposed to go into the Army? A. No, I didn't.

Q. Yoy know why you registered, don't you?

A. Who.

Q. You? A. I just registered.

Q. You just registered, didn't you?

A. Yes, sir, I did.

Q. You registered because you read in the papers that men in your age group had to register?

A. That is right.

(Testimony of Salvador G. Cervantes)

Q. And you knew when you registered that men in your age group were going to be called into the Army? [185] A. Not at that time.

Q. You knew that they—that is why you registered, didn't you?

A. I registered because I was at the age to register.

Q. And you knew that if you stayed in this country and they knew where you were you would be called up for service, didn't you?

A. Well, not until two or three years later, I think.

Q. Well, you knew that if you stayed here that they would call you up to be examined and to go into the Army?

Miss Zacsek: That is objectionable and calling for an opinion.

The Court: I don't think it is. I have allowed great freedom for counsel to examine the witness on direct examination. The objection is overruled.

Miss Zacsek: I am very deeply appreciative of that.

The Court: I will allow the same latitude to both sides. I want to do what is fair for each.

Miss Zacsek: That is right, your Honor. Thank you.

Q. By Mr. Haughton: You knew that people who registered did so so they could be called into the U. S. Army, didn't you?

A. Well, I knew that was the idea of it.

Q. What?

A. I think that was the idea of it. [186]

Q. Yes. And you had that idea when you registered? You knew that that was what you were registering for, didn't you?

(Testimony of Salvador G. Cervantes)

A. I just went up there and registered but I didn't know the registering meant anything.

Q. You did not know if you registered that that had anything to do with going into the Army?

A. Well, I didn't know at that time.

Q. You knew at that time that is what you registered for, so they could call people into the Army?

A. No, I didn't.

Q. You didn't know that? A. No.

Q. You didn't have any idea what you were registering for? A. No, I didn't.

The Court: What did you think you registered for?

The Witness: (No answer.)

Q. By Mr. Haughton: I show you here Defendants' Exhibit C and ask you if you have ever seen this paper before? A. Yes.

Q. That is your signature at the bottom, "Salvador G. Cervantes? A. Yes. [187]

Q. And did you put your signature there before a Vice Consul of the United States? A. Yes, sir, I did.

Q. Where were you when you did that?

A. In Tijuana.

The Court: What is the date of that?

Mr. Haughton: 20th day of May, 1946.

Q. Where were you when you signed that?

A. In the American Consul.

Q. And did you look at it before you signed it?

A. No, I didn't.

Q. Did he ask you any questions? A. He did.

Q. And did he tell you what he put down on the paper?

A. Yes, he did.

(Testimony of Salvador G. Cervantes)

Q. And did he ask you why you left?

A. Yes, he did.

Q. Left the United States to go to Mexico in November, 1942? A. Yes.

Q. And did you tell him? A. Yes, I did.

Q. It states here that in November 1942, "I wilfully and knowingly departed from the jurisdiction of the United States solely for the purpose of evading and avoiding train- [188] ing or service in the Armed Forces of the United States at which time I was aware that the United States was at war. Did you tell him that?

A. My brother told him that.

Q. Did you tell him that?

A. No, I didn't. I told him that but that was the same story my brother told.

Q. But you told him that, didn't you?

A. I told the same thing.

Q. But he asked you, didn't he? A. Yes, sir.

Q. And you told him? A. Yes.

Q. Did your brother tell you to tell him you left the United States to avoid service?

A. No—well, I only heard what my brother said.

Q. Did your brother tell you to tell him that?

A. I heard my brother so I told the same thing.

Q. Not what you heard your brother say. Did your brother tell you to say just what I read to you?

A. It was the same thing, in the same room.

Q. I know, but when he asked you the questions you answered, didn't you?

A. The same as my brother did.

(Testimony of Salvador G. Cervantes)

Q. Whether it was the same or not he asked the questions [189] of you, didn't he? A. Yes.

Q. And you answered him? A. Yes, sir.

Q. And when you got through making answers to the questions he filled out this paper and he asked you to swear to the truth of what was in it, didn't he?

A. Yes.

Q. And did you so swear? A. Yes.

Q. Did he ask you and did you tell him, "My father, my sole living parent remained in the United States and was opposed to my departure from there." Did you tell him that? A. (No answer.)

Q. Did you tell him that your father didn't want you to go to Mexico when you left in November 1942?

A. Yes.

Q. Then your father did know where you were going when you left? A. No, he didn't.

Q. Then how did you know that he opposed your leaving? A. That was after we went to Tijuana.

Miss Zacsek: I can't hear a word, your Honor. I don't like talking to myself. I want to hear what the witness has to say. Will you instruct him to talk louder? [190]

The Court: Read the answer.

(Question and answer read.)

Q. By Mr. Haughton: Anyway, you told the Vice Consul in Tijuana that your father did not want you to leave and go to Mexico? A. That is right.

Q. And did you tell the Consulate at that time, "My deceased uncle who was at the time a resident of Tijuana, Lower California, Mexico, urged me to leave the United States." Did you tell the Consul that?

(Testimony of Salvador G. Cervantes)

A. That is right.

Q. Is that true? A. Well, that is right.

Q. That is true? A. Yes.

Q. Now, I understood you to say that when your uncle was here and before you left you did not say a word to your uncle and he did not say a word to you?

A. Well, I didn't.

Q. And he didn't say anything to you?

A. No, he didn't.

Q. But he urged you to leave?

A. Not me, my brother.

Q. Well, you said right here that he urged you to leave. [191]

A. Well, I put what my brother put on it.

Q. When you were interviewed by Inspector McFadden of the Immigration and Naturalization Service was your brother with you at the time?

A. No, he wasn't.

Q. You were there alone with him?

A. In the room, yes.

Q. And the girl or woman who was there taking down in shorthand what you said? A. That is right.

Q. And when you were alone there with Inspector McFadden and the stenographer you admitted to him that you left the United States in November 1942 to evade serving in the Army of the United States, didn't you?

A. That is right.

Q. And when you got through with that he asked you to read it after it was transcribed?

A. He didn't tell me that.

Q. He didn't tell you that?

A. He didn't let me see the paper afterwards.

(Testimony of Salvador G. Cervantes)

Q. Well, he at least before you started answering the questions—you took an oath to tell the truth, didn't you? A. That is right.

Q. And you did tell him that you left the United States to go to Mexico to evade service in the Army of the [192] United States, didn't you?

A. That is right.

The Court: That was the truth, wasn't it?

The Witness: Well, I knew the truth when I came over here. That is why I had to tell that.

The Court: Read that answer.

(Answer read.)

Q. By Mr. Haughton: Now, you say that your father came down there to see you in 1943?

A. Yes, he did.

Q. That was in Tijuana? A. Yes.

Q. How often did he come to see you?

A. Well, he didn't use to come very often because he was sick.

Q. Well, how many times? Once or ten times?

A. Once or twice.

Q. But he did come down there to see you?

A. Yes, he did.

Q. And you talked with him? A. Yes, I did.

Q. And he talked with you? A. Yes, he did.

Q. And did he tell you that any papers were addressed to you to his house? [193]

A. He only told me my classification paper.

Q. He didn't tell you you were ordered to report for induction?

A. He didn't receive no papers like that.

(Testimony of Salvador G. Cervantes)

Q. Did he tell you that?

A. He told me that is the only paper he ever received.

Q. What was? A. The classification.

Q. You know what that means, don't you?

A. No, I don't.

Q. I understood you to state on direct examination that 1-A meant you were going to be called to go into the Army?

The Court: He did not so testify, counsel.

Mr. Haughton: I beg your pardon. I understood him to give an explanation of 1-A.

Q. Now, when you left with your brother and your uncle to go to Mexico, if I recall your testimony correctly, you stated that your brother had already received his order to go into the Army?

A. Well, he received some kind of paper. I don't know what it was.

The Court: Didn't he tell you he was ordered to go into the Army?

The Witness: Not until afterwards.

The Court: Didn't he tell you before he left? [194]

The Witness: No, he didn't.

Mr. Haughton: But he did tell you he received some kind of paper? A. That is right.

Q. But he didn't tell you what kind it was?

A. No.

Q. And your uncle didn't tell you? A. No, sir.

Q. And you didn't know what they were?

A. No, I didn't.

Q. How old are you now? A. 23.

Mr. Haughton: That is all.

(Testimony of Salvador G. Cervantes)

The Court: You made a statement before the Federal Bureau of Investigation agents, did you not?

The Witness: That is right.

The Court: Did you tell them the truth?

The Witness: Yes.

The Court: That is all.

Redirect Examination

By Miss Zacsek:

Q. Salvador, does your father speak English?

A. No, he doesn't.

Q. Can he read or write English?

A. No, he can't. [195]

Q. When you were down in the Consulate's office you were there with Pete and you have been saying that whatever you said, whatever you heard Pete say is what you said, is that right?

A. That is right.

Q. And then you said that you signed it without reading it?

A. That is right.

Q. And you also said that you knew the truth when you came over here. What do you mean by that? And then you went on to say that is why you had to tell that. What do you mean by that, that you knew the truth when you came back to the United States?

A. Well, I knew I had done wrong by that time—by the time I got back over here.

Q. By "that time" you mean people had been talking to you about it?

A. Yes, they did.

Q. And after you came back you got the idea of the fact that it was wrong?

A. Yes, I did.

Q. And then after you got back here you believed it was wrong?

A. Yes, I did.

(Testimony of Salvador G. Cervantes)

Q. Up until that time, until people got to talking to [196] you about it you did not think so, is that right?

A. That is right.

Q. What? A. That is right.

Q. While you were before you talked to me the first time in Tijuana—before you talked to me the first time in Tijuana had you had any feeling of guilt about this departure at all?

Mr. Haughton: I object to that as calling for an opinion and conclusion and leading and suggestive.

The Court: I think the witness has a right to state his state of mind. The jury is the sole judge of the weight to be given to the testimony. He may answer the question.

A. Can you say that question again?

The Court: Read the question.

(Question read.)

Q. By Miss Zacsek: While you were in Mexico with Pete and before you saw me and especially during the time you were talking to Jean, did you think you were all right? I mean, that all you had to do was wait until Jean fixed you up and you would get in the Army and your troubles would be over. A. That is right.

Q. And you didn't think you had done anything wrong? A. That is right. [197]

Q. Did you believe at that time that your whole trouble lay about the fact you did not have any papers?

A. That is right.

Q. That if you had papers you could come back and get in the Army and your troubles would be over?

A. That is right.

(Testimony of Salvador G. Cervantes)

Q. As far as you were concerned, you thought Jean Corteau, because he was on the Selective Service Board, he would fix Pete up and you up and you would go in the Army and that would be all there was to it?

A. That is right.

Q. But after you got to talking to me and to other people and lawyers and the F.B.I. and what-not, then you were told that that was a great sin?

A. That is right.

Q. And for a sin you had to pay for it?

A. That is right.

Q. And until you were told it was a sin you did not know it was a sin, is that right? A. That is right.

Miss Zacsek: That is all.

Recross Examination

By Mr. Haughton:

Q. Did you ever serve any time in the Army of the Republic of Mexico? [198]

A. I volunteered into the Mexican Army.

Q. Did you ever serve any time there? A. No.

Q. Did you ever ask your Local Board for permission to serve in the Army of Mexico? A. No, I didn't.

Mr. Haughton: That is all.

Miss Zacsek: May I have permission to open up this matter of introducing this, or attempting to introduce this exhibit for identification into evidence? I forgot about it and counsel just brought the matter up and it occurred to me—

The Court: In what respect?

Miss Zacsek: I overlooked attempting to introduce this and show the witness this as a matter of evidence. Mr. Haughton's last question reminded me of my oversight, and I now respectfully ask leave to re-examine him on this matter.

The Court: I have no objection if you have those interpreted, inasmuch as they have been referred to so often. They may be admitted, but it will be necessary to have an interpreter interpret them. Is there an official interpreter here?

Mr. Haughton: No.

The Court: I will admit them both, provided they are interpreted.

The Clerk: Exhibits F and G for identification. [199]

(The documents referred to were marked as Defendants' Exhibits F and G, and were received in evidence.)

Miss Zacsek: And may I have the corollary there too? I move to introduce that into evidence, the little booklet, Exhibit H for identification.

The Court: It is explanatory and will be admitted in evidence.

(The document referred to was marked as Defendants' Exhibit H, and was received in evidence.)

The Court: At this time we had better take our morning recess for ten minutes. The jury is admonished to bear in mind the admonishment heretofore given. We will have a recess for a few moments.

(Short recess.)

The Court: I understand you have arranged for an interpreter to interpret the Spanish into the English language.

Miss Zacsek: Yes.

The Court: Will you stipulate the jurors are present and in the jury box and the defendants are in court with their counsel?

Miss Zacsek: So stipulated.

Mr. Haughton: Yes, your Honor.

The Court: You may proceed.

Miss Zacsek: We are not quite through with the [200] translation.

The Court: We will have it translated in open court before the jury after you have finished with this witness. Are you through with this witness?

Miss Zacsek: Yes.

The Court: Are you through, Mr. Haughton?

Mr. Haughton: Yes.

The Court: Very well, the witness is excused. The interpreter will be sworn.

ARMEDA BAY,

was thereupon sworn to interpret from the Spanish into the English, and the English into the Spanish language.

The Court: Take the witness stand and read the two exhibits that are apparently in the Spanish or Mexican language, into the English language. Give us the number of exhibit first that you are reading from.

The Witness: This is Exhibit G, I believe.

It starts out with "National Army". I guess that is the way you say it, "National Army, Zone 15, Military

(Interpreter Armeda Bay)

Zone 15, Committee of the National Defense, Class No. 1922. Order No.

"Mr. Salvador Cervantes Garcia appeared voluntarily, appeared before the Commission of Registry of the 15th Zone, manifesting his desire to receive military instructions to enable him to join the defense of the nation. [201]

"The interested party has obligated himself to obey the orders with respect to the military authorities and civil authorities in conformity with the disposition of the Government of the Republic of Mexico."

Then it says this document was executed in Guadalajara, Jalisco, on the 23rd day of December 1942, and signed.

The Court: We do not care about the signature.

Miss Zacsek: I would like to have the entire thing in toto, his signature and what is printed under the line for the signature, if your Honor please.

The Interpreter: Right below his signature it says "Signature voluntarily given."

Miss Zacsek: It is the signature of the volunteer.

The Witness: Yes, that is right, signature of the volunteer, and then there is a stamp here of the Government of the State of Jalisco.

Miss Zacsek: And the Commandant?

The Witness: Yes. I haven't gotten to that yet. And there is a stamp of the Commandant of the 15th Zone, of the 15th Military Zone.

Miss Zacsek: Thank you.

The Court: What is on the back of it?

(Interpreter Armeda Bay)

The Witness: It just says—I guess it just says his name and zone and his place of birth at La Barca, Jalisco, and the date of birth, 11th day of December, 1922. Single. [202] Occupation mechanic. He is employed in this establishment and so forth. And there is another signature of the president of the Committee of National Defense.

The Court: And the book of instructions?

Miss Zacsek: May it please the court, at this time I believe we can stipulate that both of these instruments are identical except for the name and the photograph appearing thereon. Will you so stipulate?

Mr. Haughton: So stipulated.

The Court: Can you read that for us?

The Witness: I imagine this is the draft card, identification card, of Salvador Garcia Cervantes. It states his name and place of residence, Tijuana, Baja, California, Tijuana, Lower California. His address and occupation—mechanic; single. It says, "In case of mobilization he is to report to the First Reserve."

The Court: "In case of mobilization"?

The Witness: Yes. And then there is his signature again. Signed at Tijuana on the second day of May, 1945 by the Chief of the Infantry and his name.

The Court: What date?

The Witness: On the 2nd day of May, 1945.

The Court: And what are the instructions?

The Witness: And the instructions here—Article 251: "All Mexican persons between the ages of [203] 18 to 40 shall serve in the military service," and it also states that,

(Interpreter Armeda Bay)

"No person shall leave the country without permission of the military authorities first obtained."

And Article 251:

"These permits should be obtained with the understanding—"

The Court: You will have to speak up?

The Witness: "This permission has to be obtained and they have to express their reason for leaving the country and approximate time they will be out of the country. If this person applying for the permit has not been accepted for the service then in order to leave the country this document is sufficient. Kindly keep this card with you at all times."

That is all it says.

The Court: There is another page, isn't there?

The Witness: Article 216.

"The judges, notaries, or other authorities, employees of the Federation of this Municipality should require the interested person to exhibit this card at all times."

Article 167:

"Doctors that certify the death of any registrant [204] should immediately return or get this card and return it to the proper authorities. This card is not valid with any erasures or alterations and if there should be such this card should be sent to the zone indicated for alteration."

The Court: Is that all?

The Witness: Yes.

The Court: You may be excused.

Have you any further evidence?

Miss Zacsek: At this time we will call Jean Croteau, may it please the court. As far as we are advised, there is no response because Mr. Croteau is ill. We deem him a material witness. He has been duly served with a subpoena and we ask a bench warrant be issued for his appearance.

The Court: Counsel, you have filed a statement as to what you expect to prove by him.

Miss Zacsek: Yes.

The Court: I told you yesterday morning I would issue a bench warrant for the witness but if we were to do so now it would simply mean a continuance of this case. You have filed a statement as to what you expect him to testify to?

Miss Zacsek: Yes.

The Court: And the court will direct that that statement be filed because if he were here the court would not permit him to so testify on the ground it would be [205] incompetent, irrelevant and immaterial, and not tending to prove any of the issues in this case.

Miss Zacsek: Yes, your Honor.

The Court: And furthermore that it is simply corroborative of other testimony that has been introduced in this court. I do not feel it is necessary under those circumstances to order a continuance. The statement shows that he did not contact the defendants until the early part of 1946.

Miss Zacsek: '45, your Honor. If I put in '46 it is an error. I typed it myself in a state of great stupor and exhaustion last night.

The Court: And the statement is on my desk. I will file it with the clerk.

Miss Zacsek: I have my own copy. Just a moment, please. I beg the court's pardon. I ask leave to correct that. Having written it myself I ask it be corrected to show April 1945 and not 1946.

The Court: All right, we will correct it and file it. The ruling still stands. Any further witnesses?

Miss Zacsek: Just one moment, please. The defense rests.

The Court: Does the Government have any additional evidence?

Mr. Haughton: No, your Honor. [206]

* * * * *

The Court: We have the matter of settling instructions.

There is a dispute over some of the instructions and counsel is entitled to be advised prior to the argument as to the instructions the court intends to give which will require some time, so at this time I am going to excuse the jury until 1:30. The jury will bear in mind the admonition the court has heretofore given you and return at 1:30. Will counsel come into my chambers?

(Whereupon, at 11:30 o'clock a.m., the jury was excused until 1:30 o'clock p.m. of the same day.)

(The following proceedings were had in chambers and without the hearing of the jury:)

The Court: The court is advising you at this time it will not give 15, but I will give 16. And 611.21—I do not think there is any objection to it.

611.13 is the one you got up in pursuance to my request?

Mr. Lavine: That was completed at your suggestion.

Miss Zacsek: I sent you a little note.

The Court: But I am going to give that last subdivision.

Mr. Haughton: I have both of them, your Honor, as you requested.

Miss Zacsek: I merely suggest this, your Honor, that as long as one to six inclusive—

The Court: But this other is not. [207]

Miss Zacsek: It only applies to one to six inclusive. It has nothing to do with subdivision 7. That is the reason I am calling your attention to it because—

The Court: You are right, it does not apply to No. 7. It will be eliminated from your proposed instruction 11.

Miss Zacsek: May I please, as long as we have a reporter here, argue with you on the importance of 642.15?

The Court: I do not care to hear an argument. I am going to give you ten minutes to settle these instructions. When 12:00 o'clock comes I will have to leave. I am simply trying to advise you now what instructions I am going to give.

Miss Zacsek: Well, I think nothing is as important as that one section of 642.15 for this reason, may it please the court: It says regardless of the time when or the circumstances under which a registrant fails or has failed to report for induction pursuant to an order to report and so forth—

The Court: That is 642.15?

Miss Zacsek: Yes.

The Court: I said I was going to give it.

Miss Zacsek: Oh, all right. If you give that I don't care much what happens otherwise.

The Court: Well, you know pretty well now what I am going to instruct the jury on, do you not?

Miss Zacsek: Yes. [208]

The Court: And in view of that, will you, as a part of the record, waive that provision of the Rule which requires that you shall be informed in advance what the instructions of the court are going to cover?

Mr. Lavine: We will waive that.

Miss Zacsek: You have told us.

The Court: But just for the record.

Miss Zacsek: We have a record. Certainly we have been here conferring. We have been advised. We know exactly what you are going to do, certainly.

The Court: And as far as the instructions submitted by the Government, there is a conflict in this one instruction that you have submitted, Mr. Haughton. You say here for the purpose of this case you are instructed it is no defense that the defendant was not a citizen of the United States and may have been or is a citizen of another country, the Act in question pertains to every male citizen of the United States and every other male person residing in the United States who was between the ages of 18 and 65. Well, at that time it wasn't 18 and 65.

Mr. Haughton: It was when Salvador registered but not when the other one registered.

The Court: Without reading the rest of it, if I were to give that instruction there would be no occasion to give any of the others. [209]

Mr. Haughton: I think that is correct.

The Court: I am rather inclined to think so, too, but our Circuit Court has been leaning backwards in wanting all these regulations read and so I think I am going to give the regulations and I assume I shall comment on the evidence.

Mr. Haughton: I have no objection to all of them. The only thing is, unless one is familiar with them they are almost not understandable.

The Court: Instruction 15. There is no evidence to support instruction No. 15 in this case.

Miss Zacsek: May I register my earnest protest against the reading of that instruction? The instruction that is not numbered, and which—

Mr. Haughton: The court said he was not going to use that.

Miss Zacsek: If that is going to be read I want to register a protest, the one ending with the phrase, "subject, however, to certain exceptions."

The Court: I am going to give the regulations as I indicated and you will have an opportunity when I am through, if you desire, to take any exception to any of the instructions that I have given. I will excuse the jury while you make them.

Miss Zacsek: Thank you.

Mr. Haughton: I might say in connection with 15 as a [210] ground for the court not using it, if that were to be used a lot of other instructions and regulations would have to also be brought in. That read alone says,

"Anytime in making report he can come in and report to the Board who ordered him up."

The Court: It says "He may".

Miss Zacsek: Well, there are a lot of instructions if read, like Mr. Haughton says, would clutter up the record.

The Court: You know from last night's discussion there is one thing you have to try to tie in and that is that in all good faith somebody should have advised these boys that they could have taken the necessary steps, but by introducing the exhibits this morning they show in effect they did nothing more than register for the Mexican Army. They had a similar setup to ours here. There is nothing to show that they volunteered or registered with their local authorities and they were free to go about their business until they were called up.

Miss Zacsek: That is another reason why I wanted Jean Corteau here, because he is in an authoritative position and can qualify to distinguish between volunteering and registering.

Mr. Haughton: I might state in that connection that I do not think Mr. Corteau is a qualified expert on Mexican law and I think he just got a little soft-hearted and tried to [211] do something so these boys could get into the Army instead of being prosecuted and he had no authorization for it.

Miss Zacsek: I don't think Mr. Corteau is soft-hearted or soft-headed, either, because he told me that 85 per cent of those who are American born and go to Tijuana he will have nothing to do with.

Mr. Haughton: That is the opinion of Colonel Strong, who is the coordinator—

The Court: My contention is, and if I am right his testimony would be immaterial; I have permitted a great deal of testimony to go in to which there was no objection, but nevertheless it was immaterial. In other words,

what they did two years after they went to Mexico was not material. They went down in 1942 and the evidence here shows in 1945 was the first time they made any real move to get back to this country.

Miss Zacsek: But you see with your AWOL's and deserters and delinquents you have a different kettle of fish.

The Court: There is a matter of discretion. If the department of Justice had wanted to let these fellows come back and go into the Army we would never had a case. It is a case, however, which they decided to prosecute and all I have before me is the evidence they have produced and if you can talk the jury into an acquittal you will have done a good job for your clients. [212]

We will reconvene at 1:30.

(Whereupon, a recess was had until 1:30 o'clock p.m. of the same day.) [213]

Los Angeles, California, Thursday, October 31, 1946
1:30 p.m.

The Court: Will you stipulate the jurors are present in the jury box and the defendants in court with their counsel?

Miss Zacsek: So stipulated.

Mr. Haughton: So stipulated.

The Court: Mr. Haughton, you may proceed with your opening argument.

Mr. Haughton: The Government waives its opening argument.

The Court: If you waive your opening argument you can only answer the defendants' argument.

Mr. Haughton: Very well, sir.

(Opening argument by counsel for the plaintiff.)

* * * * *

The Court: You may proceed, counsel.

(Argument of counsel for the defendants.)

* * * * *

The Court: You may proceed with your closing argument, Mr. Haughton.

(Closing argument by counsel for the plaintiff.)

* * * * *

The Court: May the record show it has been stipulated that counsel have been advised prior to their argument as to the instructions that the court intends to give?

Miss Zacsek: So stipulated. [214]

Mr. Haughton: So stipulated.

INSTRUCTIONS TO THE JURY

The Court: Ladies and gentlemen of the jury, you are here really to try two cases. There are two separate indictments and they are really two separate cases that for convenience have been consolidated for trial but each case must be considered separately and an admission of one of the defendants, such as has been referred to here as a statement before the F.B.I. and other agencies, unless the other defendant was present when that statement was made and acquiesced in it, he would not be bound by it.

So, you must consider each defendant separately and any admissions that they made those admissions cannot be used against the other defendant except as to such

things where they testify as to conversations that they may have had together and in the presence of each other.

When you were sworn as jurors you were advised that you were the sole judges of the facts and that it was incumbent upon you to take the law as given to you by the court. I am now going to try to explain to you the law as it applies to this case in order to help you and as a guidance toward a fair and just verdict.

The indictment involving Pete Garcia Cervantes consists of two counts, both of which have been brought under [215] the Selective Training and Service Act of 1940.

The substance of Count 1 is that it charges the defendant was a registrant of Local Board 199; that pursuant to the Selective Training and Service Act and the regulations promulgated thereunder, the defendant was classified in 1-A and was notified by said Board of said Classification and the notice and order by said Board was duly given to the defendant to report for induction into the Armed Forces of the United States on November 9th, 1942, at Los Angeles, California.

The indictment charges that at said time and place and at all times thereafter until on or about July 14th, 1946, the defendant did knowingly fail and neglect to so report for induction into the Armed Forces of the United States as notified and so ordered to do.

The sole issue for your consideration and decision as to Count 1 is whether the evidence has proved to your satisfaction beyond a reasonable doubt that the defendant, a man required under the Act to register, had been duly commanded by his Local Board to report for induction

and that he, the registrant, has intentionally failed to do so.

Count 2 of the indictment is substantially the same as Count 1, except it alleges that on or about November 9th, in violation of the provisions of the Selective Training and Service Act of 1940, the defendant did knowingly and unlaw- [216] fully evade service in the land or naval forces of the United States in that he did knowingly and unlawfully depart from the United States and did go to a foreign country, to-wit: The Republic of Mexico, and did there remain until on or about July 14, 1946, for the purpose of evading such service.

The indictment insofar as Salvador Garcia Cervantes is concerned consists also of two counts, both of which have been brought under the Selective Training and Service Act, and the substance of Count 1 is the same as the indictment against Pete Cervantes, except that the date of requiring him to report for induction was October 8th, 1943; and Count 2 is identical in that it is alleged that on or about the 30th day of October, 1942, he did knowingly and unlawfully depart from the United States and did go to a foreign country, to-wit: The Republic of Mexico and did there remain until on or about July 14, 1946, for the purpose of evading such service.

In this case under Count 1, the parties have stipulated and you are bound by that stipulation, to all the facts set forth in Count 1, except the question of intent. So, insofar as Count 1 is concerned you only have the one question to determine, because the rest of the questions have been stipulated to. You have just one question to determine and that is was the failure to report intentional and wilfull?

As to Count 2, all the evidence without dispute [217] shows that they, the defendants, did go to Mexico on October 30th, 1942, and the sole issue before you is why did they go to Mexico. Did they go there with the intention to avoid military service in the Armed Forces of the United States? If they went there for that purpose then they are unquestionably guilty. If they didn't go there for that purpose then they are not guilty under Count 2.

I am going to read certain provisions of the regulations passed pursuant to the statute.

Regulation No. 641.3 issued pursuant to the provisions of the Selective Training and Service Act of 1940 provides as follows:

"It shall be the duty of each registrant to keep his Local Board advised at all times of the address where mail will reach him. The mailing of any order, notice or printed form by the Local Board to a registrant at the address last reported by him to the Local Board shall constitute notice to him of the contents of the communication whether he receives it or not."

This regulation, like other regulations that I shall read to you, has the force and effect of law and a violation of this regulation is a violation of the provisions of the Act to which I have referred.

You are instructed that Title 50, Section 305 (a) [218] among other things provides that,

"Diplomatic representatives, technical attaches of foreign embassies, and legations, consuls general, consuls, vice-consuls, and consular agents of foreign countries, and persons in other categories to be specified by the President, residing in the United States, who are not citizens of the United States and who have not declared their inten-

tion to become citizens of the United States, shall not be required to be registered under Section 2 and shall be relieved from liability for training and service under Section 3(b), Section 303 (b) of this appendix.”

Section 601.2 of the Regulations provides:

“(a) The term ‘alien’ means any person who is not a national of the United States.

“(b) The term ‘national of the United States’ means (1) a citizen of the United States or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

“(c) The term ‘citizen or subject of a neutral country’ is used to designate an alien who is a citizen or subject of a country which is neither a co-belligerent country nor an enemy country. [219]

“(d) The term ‘co-belligerent country’ means any country at war with a country against which the United States has declared war.

“(e) The term ‘alien enemy’ means a citizen or subject of any country who has been or may hereafter be proclaimed by the President to be an alien enemy of the United States.”

And at all times herein mentioned in the indictment Mexico was a co-belligerent country.

Section 611.13 of the Regulations provides:

“When a nondeclarant alien is not residing in the United States. (a) a male alien who is now in or hereafter enters the United States who has not declared his intention to become a citizen of the United States is not ‘a male person residing in the United States,’ within the meaning of Section 2 or Section 3 of the Selective Training and Service Act of 1940, as amended, provided:”

and skipping a number of sections that you heard read in court and going to Paragraph 7:

“He has,” referring to the alien, “within the time prescribed and in the manner provided in Section 611.21, filed with the Local Board with which he is registered, or if he is not registered with the Local Board, having jurisdiction [220] over the area in which he is located, an Alien’s Application for Determination of Residence (Form 302), together with an Alien’s Personal History and Statement (Form 304), and such application is either pending or has resulted in the issuance by the Local Board of an Alien’s Certificate of Nonresidence (Form 303) which has not expired.”

And in this case there has been no evidence that those forms were filed.

Section 611.21 provides as follows:

“What aliens may apply for a determination. Any nondeclarant alien who has entered or who hereafter enters the United States in a manner prescribed by its laws, except a nondeclarant alien described in subparagraphs (1), (2), (3), (4), (5), and (6) of Section 611.13, may file with his Local Board, if he is registered, or with the Local Board where he is at the time located, if he is not registered, an Alien’s Application for Determination of Residence (Form 302); provided, that such application is filed within 90 days after the date of his entry into the United States or within 90 days after persons of his age become liable for training and service by law, whichever is the later; and provided further, that such application is filed [221] prior to induction. And Alien’s Personal History and Statement (Form 304) must be filed with such application.”

And Section 611.21-1 provides:

“Application filed after three months. Any alien who has not complied with the provisions of Section 611.21 or Section 611.26 may file an Alien’s Application for Determination of Residence (Form 302) and an Alien’s Personal History and Statement (Form 304) with a Local Board for transmittal to the Director of Selective Service for consideration.”

As I have stated before, there is no evidence that there has been any compliance with the provisions of that Regulation.

Regulation 633.91 promulgated under the Selective Service and Training Act of 1940, provides as follows:

“Induction and subsequent classification of co-belligerent aliens. (a) At any time prior to his induction into the land or naval forces of the United States, a registrant who is not a citizen of the United States and who has not declared his intention to become a citizen of the United States but who is a citizen or subject of a co-belligerent nation may request and be permitted to be inducted into the Armed Forces of such co-belligerent nation, [222] provided an agreement has been entered into between the United States Government and the Government of such co-belligerent nation, the terms of which permit such induction and give to citizens or subjects of the United States residing in such co-belligerent nation a reciprocal right to serve in the land or naval forces of the United States.

“(b) The manner in which, the time when, and the place where a request may be made by such registrant and the procedure to be followed in order for such registrant to be inducted into the Armed Forces of the co-belligerent

nation of which he is a citizen or subject shall be prescribed by the Director of Selective Service.

“(c) When such registrant files a request for induction into the Armed Forces of the co-belligerent nation of which he is a citizen or subject and fails to report for or to be inducted into the Armed Forces of such co-belligerent nation, he shall, if acceptable, be inducted into the Armed Forces of the United States when his order number is reached.

“(d) When it has been determined that any registrant has been inducted into the Armed Forces of a co-belligerent nation in the manner in this section provided, his classification shall be re- [223] opened and he shall be placed in Class 1-G.”

Regardless of the time when the circumstances under which a registrant fails or has failed to report for induction pursuant to an Order to Report for Induction (Form 150) or to report for work of national importance pursuant to an Order to Report for Work of National Importance (Form 50), it shall thereafter be his continuous duty from day to day to report for induction or for work of National Importance, as the case may be, to his own Local Board, and to each Local Board whose area he enters or in whose area he remains.

You are instructed that the Regulations promulgated under the Selective Training and Service Act of 1940 provides the following in respect to notice:

“Every person shall be deemed to have notice of the requirements of the Selective Training and Service Act of 1940 and amendments thereto upon publication by the President of a proclamation or proclamations or other public notice fixing a time for any registration. This

provision shall apply not only to registrants but to all other persons.

"If a registrant or a person required to present himself for and submit to registration [224] fails to perform any duty prescribed by the Selective Service law, or directions given pursuant thereto, within the required time, he shall be liable to fine and imprisonment under Section 11 of the Selective Training and Service Act of 1940, as amended.

"If a registrant or any other person concerned fails to claim and exercise any right or privilege within the required time, he shall be deemed to have waived the right or privilege.

"It shall be the duty of each registrant to keep his Local Board advised at all times of the address where mail will reach him. The mailing of any order, notice, or blank form by the Local Board to a registrant at the address last reported by him to the Local Board shall constitute notice to him of the contents of the communication, whether he actually receives it or not.

"The Classification Record (Form 100) shall be open to the public at the Local Board office. It shall be the duty of each registrant to keep himself informed of his status, and any entry concerning him on the Classification Record (Form 100) shall constitute due legal notice thereof to him and to all other interested persons."

These Regulations have the force and effect of law [225] and the violation of these regulations in a violation of the provisions of the Act.

The offenses charged in the indictments require specific intent on the part of each defendant. When this is the case the intent must be shown to exist beyond a reason-

able doubt. The intent may be shown by the acts and declarations of each defendant and by circumstances surrounding their actions.

A person must be presumed to intend to do that which he voluntarily and wilfully does in fact do, and must also be presumed to intend all the natural, probable and usual consequences of his own acts.

An act or omission committed under an ignorance or mistake of fact under circumstances which disprove any criminal intent is not criminal. Where a person in good faith believes in the existence of certain facts and acts or omits to act with reference to such believed facts in a manner which would be lawful if such facts were as he believes them to be, he is not guilty of a crime, even though his act or omission is such that, if committed by one who knew the true facts, it would constitute a criminal offense.

By the finding of an indictment no presumption whatsoever arises to indicate that a defendant is guilty, or that he has had any connection with, or responsibility for, the act charged against him. A defendant is presumed to be [226] innocent at all stages of the proceeding until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offense charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be

such as you would be willing to act upon in the most important and vital matters relating to your own affairs.

Reasonable doubt is not a mere possible or imaginary doubt or a bare conjecture; for it is difficult to prove a thing to an absolute certainty.

You are to consider the strong probabilities of the case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you. Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you.

In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized, [227] because of any feeling of sympathy or other bias, to apply a strained construction, one that is unreasonable, in order to justify a certain verdict when, were it not for such feeling or bias, you would reach a contrary conclusion. And, whenever, after a careful consideration of all of the evidence, your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or by evidence affecting his character for truth, honesty and integrity or his motives; or

by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men and women. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to the Government or the defendant, the manner in which [228] he might be affected by the verdict and the extent to which he is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony.

The defendant has offered himself as a witness and has testified in the case. Having done so, you are to estimate and determine his credibility in the same way as you would consider the testimony of any other witness. It is proper to consider all of the matters that have been suggested to you in that connection, including the interest that the defendant may have in the case, his hopes and his fears, and what he has to gain or lose as a result of your verdict. You are not limited in your consideration of the evidence to the bald expressions of the witnesses; you are authorized to draw such inferences from the facts and circumstances which you find have been proved as seem justified in the light of your experience as reasonable men and women.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which men give their attention to any question depending upon evidence presented to them. You are expected to use your [229] good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment; and while remembering that the defendant is entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict. Jurors are expected to agree upon a verdict where they can conscientiously do so; you are expected to consult with one another in the jury room and any juror should not hesitate to abandon his own view when convinced that it is erroneous. In determining what your verdict shall be you are to consider only the evidence before you. Any testimony as to which an objection was sustained, and any testimony which was ordered stricken out, must be wholly left out of account and disregarded. The opinion of the judge as to the guilt or innocence of a defendant, if directly or inferentially expressed in these instructions, or at any time during the trial, is not binding upon the jury. For to the jury exclusively belongs the duty of determining the facts. The law you must accept from the court as correctly declared in these instructions.

At times throughout the trial the court has been called upon to pass on the question whether or not certain offered evidence might be properly admitted. With such [230] rulings and the reasons for them you are not concerned.

Whether offered evidence is admissible is purely a question of law, and from a ruling on such question you are not to draw any inference as to what weight should be given the evidence, as to the credibility of a witness. In admitting evidence, to which an objection is made, the court does not determine what weight should be given such evidence. As to any offer of evidence that was rejected by the court, you, of course, must not consider the same; as to any question to which an objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

If in these instructions any rule, direction or idea be stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. For that reason you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and to regard each in the light of all the others.

The verdict to be rendered must represent the considered judgment of each juror.

In order to return a verdict it is necessary that each juror agree thereto. Your verdict must be unanimous.

When you retire to your jury room to deliberate, you will select one of your number as foreman and he will [231] sign your verdict for you when it has been agreed upon. You will then return into court with the verdict and your foreman will represent you as your spokesman in the further conduct of this case in this court.

Forms of verdict have been prepared for your convenience and when you have agreed upon a verdict, the

foreman will sign the verdict upon which you agree and return it into court.

There is one verdict for each of the defendants and a blank space is provided wherein you can insert your findings of guilty or not guilty as to each count as I have heretofore pointed out.

Does counsel desire to take exception to any of the instructions?

Miss Zacsek: May it please the court, the defendants and each of them take exception—

The Court: Just a moment. If you have any exceptions I want to excuse the jury. The jury will be excused for a few moments and you will bear in mind the admonition the court has heretofore given. The defendants have a right and so has the Government to except to any of the instructions that the court has given, and the law provides they shall make those exceptions in the absence of the jury. Under those circumstances you will be excused until called back into the courtroom. [232]

(The following proceedings were had in the absence of the jury:)

The Court: You may proceed.

Miss Zacsek: First, the defendants and each of them take exception to the refusal of the court to read each and every instruction which the defendants have submitted and which the court has rejected, and in particular the instructions numbered 6, 7, 8 and 9. I think that is all the court refused of the defendants, is it not? The court gave three, I believe, did it not?

The Court: I do not have them numbered.

Miss Zacsek: I think the court read No. 3. I think that is all that we submitted.

The Court: Yes, I am quite sure I did. That was on the question of—

Miss Zacsek: Yes, that was given. And the court has already stated that we had our exception to the court's refusal to take the offer of proof?

The Court: Yes.

Miss Zacsek: That is all.

The Court: Will you have the jury return to the courtroom?

(Whereupon the jury returned to open court.)

The Court: The clerk will file the instructions that were refused. The bailiffs will be sworn. [233]

(Whereupon, two bailiffs were sworn in the usual manner.)

The Court: Ladies and gentlemen, you will now retire for your deliberations and I am handing you the blank verdicts and also all the exhibits, documentary exhibits in the case.

I neglected to ask if you stipulated all the jurors were present and in this jury box and that the defendants were in court with their counsel.

Mr. Haughton: So stipulated, your Honor.

Miss Zacsek: Yes, we so stipulate.

The Court: And the court will note they are all present. You may now retire to the jury room for your deliberations.

(Whereupon, at 3:05 o'clock p.m., the jury retired.)

(At 5:10 o'clock p.m., the jury returned to open court and the following proceedings were had:)

The Court: Let the record show the jurors are in the jury box and the defendants are in court with their counsel.

Miss Zacsek: So stipulated.

Mr. Haughton: So stipulated.

The Clerk: The jury has been out now about two hours and it is about dinner time for everybody concerned. I was wondering if there is any question of law that is bothering the jury and that the court might assist you with in arriving at a verdict. [234]

I feel in this case the nature of the evidence is such and the time it has taken to try it, a jury should be able to arrive at a verdict.

It is difficult for the court to understand why, in view of the evidence here, a verdict cannot be reached. I do not desire to put the Government to the additional expense by declaring a mistrial and having to try the case over again. I was wondering if there is any question of law that is bothering the jury. The questions of fact are for you to pass upon.

A Juror: I would like to ask a question of law, your Honor. Is it necessary for a guilty verdict that it must be unanimous?

The Court: It must be unanimous. The jury must agree unanimously on any count. But as I pointed out to you before, when you boil this case down it is a simple question. You have heard the testimony or the evidence offered by the Government under stipulation of counsel.

You have heard the facts as stated by the defendants and you have heard their testimony on the witness stand. From those facts it seems to me that any fair minded jury should be able to agree one way or the other and for that reason the court, at this time, if there are any other instructions required—

A Juror: Shall a report be made before the final verdict on both defendants has been reached? [235]

The Court: Well, of course, under the law you can arrive at a verdict on any one of the counts and so report it.

A Juror: Can we report it at this time?

The Court: Well, you would have to prepare your verdict and submit it in the regular form. The court feels the Government has been to considerable expense in this matter and so have the defendants. The defendants are in jail and if they are to be turned loose they should be turned loose without having to await another trial; and if they are guilty they should be convicted without the necessity of bringing in another jury and impanelling a jury.

I feel that a jury in considering a case should always be free to consult with one another and always be open to reason. By that I do not mean any juror should sacrifice his honest opinion, but I think a jury of 12 people, and you appear to be reasonable people, should be able to arrive at a verdict one way or the other. I am going to give you plenty of time to do it.

If you are ready to go to dinner now I will have the bailiff make arrangements for you.

The bailiff is directed to take the jury to dinner, and I suggest that counsel make arrangements with the bailiffs

as to where they can be contacted. There is no reason why counsel should remain in the courtroom. [236]

Miss Zacsek: Thank you, your Honor.

The Court: Are there any exceptions to the comments of the court?

Miss Zacsek: None, your Honor.

Mr. Haughton: No, your Honor, no exceptions.

(Whereupon, at 5:15 o'clock p.m., the jury retired from the courtroom.)

(At 8:30 o'clock p.m., the jury returned to open court and the following proceedings were had:)

The Court: Will you stipulate the jurors are present and in the jury box and the defendants are in court with their counsel?

Miss Zacsek: So stipulated.

Mr. Haughton: Yes, your Honor.

The Court: Mr. Foreman, the bailiff advises me the jury desires to have some portions of the testimony read to them, is that correct?

The Foreman: That is correct.

The Court: And what portions of the testimony are you interested in?

The Foreman: One of the jurors has a question.

The Court: Very well.

A Juror: May I address the bench?

The Court: Yes.

A Juror: I wanted the testimony of the defendant, the [237] questioning of Salvador after the preliminary questioning where she asked him why he did sign the paper to the effect that he had gone over to Mexico to

avoid the Armed Services and he replied because they told him to, and then she questioned him regarding the fact that he did not have a sense of guilt at the time, but later on he had a sense of guilt when questioned by them and impressed with the fact that he had done wrong. I wanted that clarified in my own mind.

(The portion of the testimony indicated was read by the reporter to the jury.)

The Foreman: May I state we have reached a verdict as to one of the defendants, and should it be turned in now or later? I think we will need only a little while for a little further discussion.

The Court: You had better take some more ballots and if you decide you cannot agree you may return into court and I will not keep you all night.

The Foreman: All right.

A Juror: May I address the court, please, in connection with this testimony? It is my recollection that during or shortly after the conclusion of the cross examination the court addressed some questions to the witness. Could we hear those questions and answers, please?

The Court: I want to give one additional instruction to [238] the jury. It may be repetitious; but Salvador is charged under two counts. One of them charges evading service by going to Mexico, which is an independent offense from failing to report. Under the law it was the duty of Salvador to report and the failure to keep in touch with his Draft Board is no excuse. The only question insofar as Salvador is concerned on the first count is whether he did it intentionally. But the law requires that when a man registers and he has been classified by his

Board that he must have a mailing address where notices will reach him, and that it is the duty and it is imposed upon him to keep his Board advised of any change of address so that when the Board mailed the notice to report to Salvador at the last known address, and when he failed to report, and if it was done intentionally, then he is guilty under Count 1. In other words, what I am trying to point out to you is that a person may or may not be guilty of Count 1 or may or may not be guilty of Count 2. They are not all one offense.

Miss Zacsek: May I respectfully request an exception to the court's remarks?

The Court: In what respect is it in error?

Miss Zacsek: I deem it in error because it exceeds the questioning of the jury. Nobody on the jury has requested the court to comment on the law. The court asked the jury earlier this evening if the jurors or any of them would like [239] assistance on it from the court on the point of law and there was a unanimous silence.

The Court: Just a moment. I have heard your objection. I wish to state that even if I wanted to comment on the evidence at this late date I could do so and give this jury any instruction as to the law or as to the facts, if I wanted to discuss the facts with the jury, which I have not done, and if I have expressed any opinion that indicates the court's viewpoint in the matter it is not binding upon the jury in any way, shape or form.

Miss Zacsek: I would like to state the further grounds of my objection, your Honor. You asked me if I had any exceptions but you did not permit me to finish and I would like that privilege. We have a record—

The Court: Proceed.

Miss Zacsek: The second ground is—I wish to conclude the first one. The court had volunteered when nobody asked the court to express an opinion or a direction on the point of law. Secondly, the court reiterated a matter which I think has been exceedingly clearly stated to the jury, to-wit, that there were not only as to Salvador but as to Pete Cervantes, two distinct counts for each defendant. Therefore, the reiteration and the drawing of the attention of the jury I feel is beyond the bounds of the court's province at this particular point and for that reason I wish the record to [240] show the exception taken by the defendants.

The Court: Exception noted. The comments I have made have only pertained to one defendant.

A Juror: If your Honor please, what does the classification 4-C stand for?

The Court: That is one that is not subject to military service. Mr. Haughton, do you have that?

Mr. Haughton: I will get it and read it if the court please. 4-C is the classification accorded an alien who departs from the United States to evade service, among several other classifications. If the court wishes I will get the classification and let it be read.

Miss Zacsek: I think that is a very good suggestion so we have it in toto because I also understand when Form 303 is given that that classification is applicable—after that certificate is issued. I may be in error.

The Court: I am not going to hold this jury while counsel is looking up some books. I can state simply that 1-A classification is the classification under which people were inducted into the Army.

A Juror: Your Honor, I would like to state at this time that I was going to ask you to clarify that law, the law that you just gave us. Also I would like to know if a man is not receiving his order for induction due to his neglect in giving the right mailing address, is that, according [241] to law, an intent to avoid service?

The Court: Well, that is a matter for you to consider. You will get a tax bill in a few days—that is, you are supposed to, but if you don't get it and do not pay the tax you will pay the penalty. But this is a criminal offense and if there is a reasonable doubt in your mind as to the intent of these defendants or either of them they are entitled to the benefit of that doubt.

The jury will retire for further deliberation.

(Whereupon, at 9:20 o'clock p.m. the jury retired.)

(At 9:50 o'clock p.m., the following proceedings were had in open court in the presence of the jury:)

The Court: Will you stipulate the jurors are present in the jury box and the defendants are in court with their counsel?

Miss Zacsek: So stipulated.

Mr. Haughton: Yes, your Honor.

The Court: Members of the jury, have you arrived at a verdict?

The Foreman: Yes, your Honor.

The Court: Present the verdict to the clerk, please. The clerk will read the verdict.

(Verdict read.)

The Court: Members of the jury, is that your verdict as read? [242]

(Assent.)

The Court: Do you desire to have the jury polled?

Miss Zacsek: Yes.

The Court: The clerk will poll the jury.

The Clerk: Are the two verdicts as I read them your verdict?

(The entire jury being polled answered in the affirmative.)

* * * * *

Miss Zacsek: * * * * * Under the rules is it essentially necessary at this time to give oral notice of appeal or whether one can—

The Court: It is ten days. You are given ten days in which to file notice of appeal.

Miss Zacsek: Then an oral statement is not required at this time?

The Court: That is my understanding and the record will show that I have so stated to you.

(Whereupon, at 10:10 o'clock p.m., the above entitled matter was concluded.)

[Endorsed]: Filed Jan. 7, 1947. [243]

[Endorsed]: No. 11471. United States Circuit Court of Appeals for the Ninth Circuit. Pete Garcia Cervantes, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed January 14, 1947.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the Circuit Court of Appeals of the United States
in and for the Ninth Circuit

No. 11471

PETE GARCIA CERVANTES,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON APPEAL

Comes now the appellant in this action in connection with his appeal, and makes the following statement of points on appeal on which he intends to rely:

1. That the Court erred in refusing to give an instruction that every alien between the ages of 21 and 36, who lives or has a place of residence or abode in the United States, temporary or otherwise, or for whatever purpose is taken or established, is required to present himself for and submit to registration unless such alien falls within one of the specific clauses exempted from such registration by Section 5(a) of the Selective Service and Training Act of 1940, as amended.

2. That the Court erred in refusing to give an instruction that the Rules and Regulations made by the Director of Selective Service and Training Act of 1940 does not provide any norm or standard by which the Local Board can determine whether or not a person is in one of the "other categories" mentioned in Section 5 of the Act, 50 U. S. C. A., Appendix, Section 305, nor do they provide a norm or standard by which if certain facts are present it can determine whether or not a per-

son is or is not residing in the United States, as that term is used in Sections 2 and 3 of the Act, 50 U. S. C. A., Appendix, Sections 302, 303.

3. That the Court erred in refusing to give an instruction that due process has been denied where there is no rule promulgated in the regulations whereby any standards are established for any person who is subject to the Selective Training and Service Act to determine whether or not he is or is not, entitled to a certificate of non-residence.

4. That the Court erred in refusing to give an instruction that by treaty dated January 22nd, 1943, between the United States of America and the Government of Mexico, the nationals of either country residing in the other shall be accorded the same rights and privileges as nationals of the country of residence; that nationals of each country who have been registered for or inducted into the army of the other country in accordance with the military service laws of the latter and who have not declared their intention to acquire the citizenship of the country in which they reside shall upon being designated by the country of which they are nationals, and with their consent be released for military service in its forces; that the procedure for the transportation and turning over of these persons will be agreed upon by the appropriate authorities of the two countries who are empowered to bring about the objection desired.

5. That the Court erred in refusing to give an instruction that if a delinquent reports or is brought before a Local Board, other than his own Local Board, the Local Board to which he reports, or before which he is brought, shall advise his own Local Board, by telegram or other

expeditious means that the delinquent has reported to or has been brought before such Local Board and that he will be inducted or assigned to work of national importance as the case may be if it is satisfactory to his own Local Board; that the registrant's own Local Board shall reply by telegram or other expeditious means.

That the Court erred in refusing to give as part of the above instruction that if the registrant's own Local Board advises or if it is ascertained from the United States Department of Justice that the registrant is delinquent because he has failed to respond to an Order to Report for Induction (Form 150) or an Order to Report for Work of National Importance (Form 50), the delinquent shall be delivered for induction or steps taken to assign him to Work of National Importance or the Local Board to which he has reported, or before which he has been brought, shall prepare such papers as may be necessary in order to effect such induction or assignment and forward copies thereof to the registrant's own Local Board; that the Induction or Assignment of such a registrant shall be reported to the registrant's own Local Board in the same manner as if the registrant had been transferred for delivery to the Local Board from which such registrant was inducted.

That the Court further erred in refusing to give as part of the above instruction that if the registrant's own Local Board advises that an Order to Report for Induction (Form 150), or an Order to Report for Work for National Importance (Form 50) has not been issued to

such registrant or that the registrant is no longer a delinquent, it shall advise the Local Board before which the registrant has appeared or has been brought of the action to be taken with reference to such registrant.

6. That the Court erred in refusing to allow a written offer of proof to be admitted in evidence, of the testimony of Eugene Cordeau, Sr., a material witness, and to be submitted to the jury.

7. That the defendant has been denied due process of law.

8. That the verdict of the jury was contrary to law.

9. That the verdict of the jury was contrary to the evidence.

Wherefore, the appellant prays that the judgment of the District Court may be reversed.

ANNA ZACSEK and
HOWARD A. LEVINE

By Anna Zacsek

Attorneys for Appellant

Received copy of the within Statement of Points on Appeal this 31 day of January, 1947. James M. Carter, U. S. Atty., by Wm. P. Haughton, Asst. U. S. Atty., Attorneys for Government.

[Endorsed]: Filed Feb. 3, 1947. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause]

ORDER THAT ORIGINAL EXHIBITS BE
CONSIDERED IN THEIR ORIGINAL FORM

Good cause therefore appearing, It Is Ordered that all of the original exhibits in above cause need not be printed in the transcript of record herein, but will be considered by this Court in their original form.

FRANCIS A. GARRECHT

Senior United States Circuit Judge

Dated: San Francisco, Calif., February 4, 1947.

[Endorsed]: Filed Feb. 4, 1947. Paul P. O'Brien,
Clerk.